



REQUEST FOR PROPOSALS

RFP NO. 2018-01

The Palm Beach Metropolitan Planning Organization
D.B.A.
The Palm Beach Transportation Planning Agency

is seeking
Proposals for:

ERP System Implementation and Services

Respondents shall submit one (1) unbound original and one (1) complete electronic copy in pdf/Excel/.wmv formats on USB flash drive of the complete proposal, which must be received at the Palm Beach Transportation Planning Agency (TPA) offices no later than the closing date and time identified below. See Section 1.6 of the RFP for mailing instructions.

**ENVELOPE MUST BE IDENTIFIED WITH THE
DEADLINE DATE FOR RECEIPT OF PROPOSALS
AND THE RFP NUMBER.**

IN ACCORDANCE WITH THE PROVISIONS OF ADA, THIS DOCUMENT MAY BE
REQUESTED IN AN ALTERNATE FORMAT

Commissioner Hal Valeche, Chair

Nick Uhren, Executive Director
Palm Beach Transportation Planning Agency
2300 N Jog Rd,
West Palm Beach, FL 33411

DATE ISSUED: October 5, 2018

CLOSING DATE AND TIME: October 29, 2018 @ 4:00 P.M. EST

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SECTION 1 - GENERAL INFORMATION

1.1 ISSUING OFFICE:

This Request for Proposal (RFP) is issued for the Palm Beach Transportation Planning Agency (hereinafter referred to as "TPA") by the TPA. The TPA is the SOLE point of contact concerning this RFP. All communications regarding this RFP must be done through the TPA. See Section 1.7 Contact Person.

1.2 PURPOSE OF THE PROJECT:

The TPA is seeking Proposals from qualified contractors to provide a comprehensive ERP accounting and human resources solution that satisfies established federal financial accounting guidelines and fulfills the operational needs of the agency.

1.3 PERIOD OF CONTRACT:

The proposed effective date of this Contract is January 1, 2019. The selected respondent(s) will provide services for a thirty (30) month period ending June 30, 2021. Two (2) twelve (12) month renewal option(s) may be offered by the TPA, at the TPA's sole discretion.

1.4 QUALIFICATION OF RESPONDENTS:

All respondents to this RFP shall have demonstrated experience in supplying such services and shall meet all criteria/requirements identified in this RFP.

1.5 TIMETABLE:

The anticipated schedule and deadline for the RFP and Contract approval are as follows:

<u>Activity</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
RFP available for Download from Palm Beach TPA: http://www.PalmBeachTPA.org/Business	10/5/2018	4:00 p.m.	Palm Beach TPA 2300 N. Jog Road, 4th Floor W. P. B., FL 33411
Deadline for receipt of questions of comments	10/22/2018	4:00 p.m.	Palm Beach TPA 2300 N. Jog Road, 4th Floor W. P. B., FL 33411
Deadline for receipt of Proposals And Public Opening of Proposals	10/29/2018	4:00 p.m.	Palm Beach TPA 2300 N. Jog Road, 4th Floor W. P. B., FL 33411

Selection Committee meeting	11/1/2018	9:00 a.m.	Palm Beach TPA 2300 N. Jog Road, 4th Floor W. P. B., FL 33411
Posting of Notice of Intent to Award http://www.PalmBeachTPA.org/business	11/1/2018	5:00 PM	Palm Beach TPA 2300 N. Jog Road, 4th Floor W. P. B., FL 33411
Award Date	12/13/2018	9:00 a.m.	South County Civic Center 16700 Jog Rd. Delray Beach, FL 33446
Contract Start Date	1/1/2019		

NOTE: The TPA reserves the right to alter the above activities, places and/or times at the TPA's sole discretion.

1.6 **ENTERING PROPOSALS:**

All Proposals must be sent on 8 ½" x 11" documents with a maximum of 10 pages (not including transmittal letter, Table of Contents, resumes and required forms) with a minimum of 10pt text.

Respondents shall submit one (1) unbound original proposal and one (1) complete electronic copy of the Proposal, including all signed and authorized forms, in pdf format with accompanying Microsoft Excel Workbooks (specified in section 3) in .xlsx format and demo videos (specified in section 3) in .wmv format on a USB flash drive. The proposal must be received in the TPA's office by October 29, 2018, 4:00 p.m. local time. The proposal must be submitted in a sealed envelope or shipping box. The respondent's complete return address must be included on the outer envelope or wrapper enclosing any materials submitted in response to this RFP. The outer envelope or wrapper should be addressed as follows:

Respondent Name
Address
Phone No.

Palm Beach Transportation Planning Agency

2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411
RFP No. 2017-02

Title: ERP System Implementation and Services
Due Date: 10/26/2018, 4:00 p.m. local time

The TPA's office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays observed by Palm Beach County.

Respondents are responsible for informing any commercial delivery services, if used, of all delivery requirements and for insuring that the required address information appears on the outer wrapper or envelope used by such service.

The Price Proposal Form (Appendix G) must be signed by an officer of the company who is legally authorized to enter into a contractual relationship in the name of the respondent ("Authorized Person") and notarized.

The submission of a proposal by a respondent will be considered by the TPA as constituting a legal offer by the respondent to perform the required services at the pricing submitted to the TPA identified therein.

1.7 CONTACT PERSON:

The contact person for this RFP is Sandra Feliciano, Procurement Coordinator, (561) 478-5773, e-mail address: SFeliciano@PalmBeachTPA.org.

Respondents are advised that from the date of release of this RFP until award of the contract, NO contact with TPA staff concerning this RFP is permitted, except as authorized by the contact person designated herein.

1.8 ADDITIONAL INFORMATION / AMENDMENT(S):

Any questions, comments (i.e., additional information or clarifications) must be made, in writing via e-mail or U.S. Mail, no later than the date specified and to the address listed in the RFP Timetable (Section 1.5) to the Contact Person (Section 1.7 above.) The request must contain the respondent's name, address, phone number, and e-mail address.

Changes to this RFP, when deemed necessary by the TPA, will be completed only by written Amendment(s) issued prior to the Deadline for receipt of Proposals. Respondents should not rely on any representations, statements or explanations other than those made in the RFP or in any Amendment to this RFP. Where there appears to be a conflict between the RFP and any Amendment issued, the last Amendment issued shall prevail.

As they are issued, all Amendments to solicitations will be posted under the applicable solicitation on <http://www.PalmBeachTPA.org/business>. It is the sole responsibility of the respondent to routinely check for any Amendments prior to the Deadline for receipt of Proposals. The TPA shall not be responsible for the completeness of any RFP package not downloaded from directly from the TPA website.

It is the respondent's sole responsibility to obtain all Amendments. The respondent should verify with the designated Contact Person (see Section 1.7) prior to submitting a proposal that all Amendments have been received. Respondents are required to

acknowledge the receipt of all Amendments by submitting the Amendment Acknowledgement Form (Appendix B) as part of their proposal.

Remainder of this page intentionally blank

SECTION 2 - GENERAL TERMS AND CONDITIONS

2.1 PROPOSAL GUARANTEE:

Respondent guarantees their commitment, compliance, and adherence to all requirements of the RFP by submission of their proposal.

2.2 MODIFIED PROPOSALS:

A respondent may submit a modified proposal to replace all or any portion of a previously submitted Proposal until the Deadline for receipt of Proposals. The TPA will only consider the latest version of the proposal.

2.3 WITHDRAWAL OF PROPOSALS:

A proposal may be withdrawn only by written notification. Letters of withdrawal received after the Deadline for receipt of Proposals will not be accepted unless the contract has been awarded to another proposer or no award has been made within ninety (90) days after the Deadline for receipt of Proposals.

Unless withdrawn, as provided in this subsection, a proposal shall be irrevocable until the time that a contract is awarded.

2.4 LATE PROPOSALS, LATE MODIFIED PROPOSALS:

Proposals and/or modifications to Proposals received after the Deadline for receipt of Proposals specified in RFP Timetable (Section 1.5) are late and shall not be considered.

2.5 RFP POSTPONEMENT / CANCELLATION:

The TPA may, at its sole and absolute discretion, reject any and all, or parts of any and all Proposals; waive any minor irregularities in this RFP or in the Proposals received as a result of this RFP; postpone or cancel, at any time, this RFP process; or re-issue this RFP.

2.6 COSTS INCURRED BY RESPONDENTS:

All expenses incurred with the preparation and submission of Proposals to the TPA, or any work performed in connection therewith, shall be borne by the responding party. No payment will be made for Proposals received, nor for any other effort required of or made by the respondents, prior to commencement of work as defined by a contract approved by the TPA.

2.7 PROPRIETARY / CONFIDENTIAL INFORMATION:

Any material submitted in response to this RFP is considered a public document in accordance with Section 119.07, F.S. This includes material which the proposer might consider to be confidential. All submitted information that the responding respondent believes to be confidential and exempt from disclosure (i.e., a trade secret or as provided

for in Section 119.07 and Section 812.081, F.S.) must be specifically identified as such. Upon receipt of a public records request for such information, a determination will be made as to whether the identified information is in fact confidential.

2.8 NEGOTIATIONS:

The TPA may award a contract on the basis of initial offers received, without discussions. Therefore, each proposal should contain the respondent's best price and final offer.

Pursuant to Paragraph 5(b) of Section 287.055, Florida Statutes, the TPA, at its sole discretion, reserves the right to enter into Contract negotiations with the highest evaluated responsive, responsible Proposer. If the TPA and said Proposer cannot negotiate a successful Contract, the TPA may terminate said negotiations and begin negotiations with the next highest evaluated responsive, responsible Proposer. This process may continue until the Contract acceptable to the TPA has been executed or all proposals are rejected. No Proposer shall have any rights against the TPA arising from such negotiations or termination thereof.

2.9 RIGHT TO PROTEST

Any respondent who is aggrieved in connection with the recommendation for contract award may protest by submitting a written protest to the TPA Executive Director within five (5) business days of the posting of Intent to Award by the TPA.

- A. Protests must be submitted in writing, addressed to the TPA Executive Director, via hand delivery, U.S. Mail, or email to the Contact Person (Section 1.7) above. The protest shall identify the protestor and the solicitation, and shall include a factual summary of the basis of the protest. Such protest is considered filed when it is received and date/time stamped by the TPA. Only those issues submitted in writing within the time frame specified for the notice of protest will be considered.
- B. Upon receipt of the written protest, the TPA Executive Director will review the protest, any written material provided by the parties, or may, at his/her sole discretion, schedule an informal meeting in order to render a decision. The TPA Executive Director shall issue a written decision to either uphold or deny the protest within five (5) business days from receipt of the protest. The written decision shall provide the general rationale for said determination and shall be provided to the protestor and to any other party to the protest.
- C. The protest may be upheld based upon a violation of the provisions of the Palm Beach TPA Procurement Policy or any other ordinance, resolution, policy, or procedure, or upon discovery of an irregularity or procedural flaw that is so severe as to render the process invalid. If the upholding of the protest will result in change of the recommended awardee, a new recommended award shall be posted by the TPA in accordance with the Palm Beach TPA Procurement Policy. If the upholding of the protest will result in a cancellation of the RFP, the TPA Executive Director will uphold the protest and cancel the RFP.

- D. If the protest is denied, the protestor may submit a written appeal to the Executive Director within three (3) business days of the denial. An Appeal Committee of no less than three (3) TPA Governing Board Representatives including the Chair and/or the Vice Chair shall hear the appeal. The Appeal Committee will review the appeal; any written material provided by the parties and the determination of the TPA Executive Director and will issue a final decision. The Appeal Committee's decision shall be the final determination and disposition of the protest.

2.10 DISADVANTAGED BUSINESS ENTERPRISE (DBE):

- A. It is the policy of the TPA that disadvantaged businesses, as defined by 49 Code of Federal Regulations (CFR), Part 26, shall have an opportunity to participate in the performance of TPA contracts in a nondiscriminatory environment. By submitting a response to this RFP, Proposer certifies that it does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status, as provided by Title VI of the Civil Rights Act of 1964, as amended 42 USC 2000d to 2000d-4, and Title 49 CFR, Part 21, the Civil Rights Restoration Act of 1987 and the Florida Civil Rights Act of 1992 in the performance of the Services requested herein. Proposer shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts, and certifies that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation for the Services required herein under any TPA program or activity. Failure of Provider to comply with this provision may result in the immediate termination of the agreement by the TPA or such other remedy, as the TPA deems appropriate.
- B. For purchases made as a result of this solicitation, the TPA shall consider DBE participation in evaluating respondent's Proposals and making an award of a contract. Although there is not a specific target for this RFP, the TPA has an agency-wide target to match the state of Florida DBE goal, which is currently 10.65% for DBE participation. Therefore, respondents are encouraged and urged to make every effort to actively seek certified DBE participation and include that participation as part of their proposal. Respondents should indicate the estimated percentage of the contract that may be performed by DBE firms in the Key Personnel section of their proposals.
- C. Only those firms certified by the Florida Department of Transportation (FDOT) or other participants in Florida's Unified Certification Program at the time of proposal opening shall be counted toward the established DBE goals. It is the responsibility of the respondent to confirm and document the certification of any proposed DBE.
- D. Successful Proposer(s) shall agree to assist the TPA in the completion of any documents required to be submitted to the FTA or FHWA for compliance with the DBE program.

2.11 RULES; REGULATIONS; LICENSING REQUIREMENTS:

The respondent shall comply with all laws, ordinances, and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Respondents are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may, in any way, affect the services offered, to include Executive Order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375, and as supplemented by the Department of Labor Regulations (41 CFR, Part 60).

2.12 CRIMINAL HISTORY RECORDS CHECK:

The TPA is physically hosted on the premises of Palm Beach Board of County Commissioners facilities. The TPA complies with applicable Palm Beach County Codes as required by that relationship until such a time as that relationship changes or the TPA relocates its domicile.

Pursuant to Palm Beach County Code Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), the County will conduct fingerprint based criminal history record checks on all persons not employed by the County who repair, deliver, or provide goods or services for, to, or on behalf of the County. A fingerprint based criminal history record check shall be conducted on all employees of contractors and subcontractors of contractors, including repair persons and delivery persons, who are unescorted when entering a facility determined to be either a critical facility ("Critical Facilities") or a criminal justice information facility ("CJI Facilities"), which are critical to the public safety and security of the County. County facilities that require this heightened level of security are identified in Resolution R-2003-1274, as amended. In October 2013, compliance with the requirements of the U.S. Federal Bureau of Investigation's (FBI) CJI Security Policy was added to the Ordinance, which includes a broad list of disqualifying offenses. The respondent is solely responsible for understanding the financial, schedule, implications, and/or staffing implications of this Ordinance. Further, the respondent acknowledges that its proposal price includes any and all direct or indirect costs associated with compliance of this Ordinance, except for the applicable Florida Department of Law Enforcement (FDLE)/FBI fees that shall be paid by the TPA.

2.13 REVIEW OF PROPOSALS:

All sealed proposals will be publicly opened on October 29, 2018 at 2300 N Jog Road 4th Floor, Room 4E-12 at 4:01 PM. Each proposal will be reviewed to determine if the proposal is responsive to the RFP. Proposals deemed to be non-responsive will be rejected without being evaluated by the TPA. A responsive proposal is one which has been signed, has been submitted by the specified submission time, and has provided the information required to be submitted with the proposal (as stated in Section 4) including:

Business Information Form	ERP Price Proposal Workbook
Amendment Acknowledgement Form	Price Proposal Form
Table of Contents	Proposer Qualification Form
Letter of Transmittal	Prior Implementation Referral Forms (x5)
Executive Summary	Anticipated DBE Participation Statement
Technical Proposal	Proposers disclosure of Subcontractors and Suppliers
Implementation Plan	Drug Free Workplace Affidavit
ERP Functional System Requirements Workbook	

2.14 EXCEPTIONS TO THE RFP:

All exceptions taken must be specific, and the respondent must indicate clearly, what alternative is being offered to allow the TPA a meaningful opportunity to evaluate the proposal. Respondents are cautioned that submitting an alternative proposal does not relieve the respondent from submitting the "Minimum Requirements" as stated in Section 3. The TPA is under NO obligation to accept any proposed exceptions or alternatives.

2.15 TPA'S EXCLUSIVE RIGHTS:

The TPA reserves the exclusive rights to:

- A. Waive any deficiency or irregularity in the selection process;
- B. Accept or reject any or all qualifications statements in part or in whole;
- C. Request additional information as appropriate; and,
- D. Reject any or all submittals if found not to be in the best interest of the TPA.

By submitting a Proposal for the services, all Proposers acknowledge and agree that no enforceable Agreement arises until the TPA signs the Agreement, that no action shall lie to require the TPA to sign such Agreement at any time, and that each Proposer waives all claims to damages, lost profits, costs, expenses, reasonable attorney's fees, etc., as a result of the TPA not signing such Agreement.

2.16 MANDATORY MINIMUM REQUIREMENTS:

In order for a Proposal to be considered, the Proposer must meet the following requirements:

- A. Proposers shall possess and demonstrate, using the Proposer Qualification Form, five (5) years of experience, knowledge skills and abilities in (a) project(s) of similar size and/or complexity in accordance with the Scope of Services.
- B. Proposers shall provide at least two examples of previously completed ERP Software System implementations with a project of similar size and complexity for a government within the state of Florida.

To meet the above requirements, the Proposer may use qualifications and resources of a Subcontractor that will be used by the Proposer to perform the Work. Use of Subcontractors to meet such requirements shall be clearly indicated in the Proposal.

2.17 SELECTION PROCESS:

All Responsive Proposals received in accordance with the timeline established in this RFP (as stated in Section 1.5) will be evaluated by a TPA Selection Committee ("Committee") appointed by the Executive Director or his/her designee. The Committee will evaluate and rank the proposals based on a weighted score point formula.

The Committee shall evaluate Proposals based on the information submitted with the proposal. Accordingly, respondents are urged to ensure that their proposal contains all the necessary information for the TPA to fairly and accurately evaluate each of the criteria listed below in Section 2.18.

2.18 EVALUATION CRITERIA:

The RFP Contact Person shall review and identify the Proposals that satisfy the mandatory minimum criteria. All proposals that satisfy the minimum criteria set forth in this RFP shall be submitted to the Committee to evaluate and rank the Proposals using the evaluation criteria as follows:

	<u>Maximum Points</u>
1. Functional System Requirements (See Section 3.5)	0-30
2. Price Proposal (including initial and ongoing costs) (See Section 4.8)	0-25
3. Technical Proposal (See Section 4.5)	0-10
4. Implementation Plan (See Section 4.6)	0-10
5. Demo Requirements (See Section 4.10)	0-15
6. Proposer Qualifications (See Section 4.9)	0-10
Total	100

Total scores for each Proposal shall be based upon an average of the scores of all Committee members for each evaluation criteria.

The Committee may require public presentations regarding the firms' qualifications, approach to the Work, demonstrations and ability to furnish the required services. Following discussions and possible presentations by each qualified firm, the Committee members may adjust their scoring as they deem appropriate. At any point during the evaluation, a Proposer may be excluded from further consideration based on the mandatory minimum requirements or the evaluation criteria set forth in this Section.

In the event of identical evaluations, the Proposers with the identical highest scores shall be provided one (1) hour to demo a walk-through of the proposed solution. No less than 20 minutes of that one (1) hour shall be for Committee Member questions. Upon the conclusion of the demos, the Committee shall have the opportunity revise its scoring of the Evaluation Criteria. If the Tie persists, the inclusion of a Drug Free Workplace Certification shall serve to break the tie. The final tie breaker shall be by means of a random selection (i.e. coin toss.)

2.18 AWARD OF CONTRACT:

The Committee will rank the finalists and make an award recommendation to the Executive Director and the TPA Governing Board ("Board"). The Board will consider the rankings and authorize execution of an agreement in accordance with the terms of this RFP and the Proposer's Proposal.

The award, if any, will be made to the highest ranked responsive, responsible respondent whose proposal is considered to be the most advantageous to the TPA based on the TPA's opinion after review of every such proposal including, but not limited to, price.

The Notice of Intent to Award will be issued at the conclusion of the Selection Process in Section 2.17. The final Award of the contract is subject to Board approval.

2.19 STANDARD CONTRACT PROVISIONS (SECTION 5):

The selected respondent will be required to execute a contract similar to the attached Sample TPA Contract (Section 5). If a respondent has comments related to any of the provisions in this RFP and/or the contract sample, comments must be made, in writing, no later than the date specified in the RFP Timetable (see Section 1.5).

Standard TPA Contract provisions (general and specific) will be incorporated into any contract resulting from this RFP. Should any selected respondent and the TPA be unable to consummate a written contract, the TPA may proceed to the next most advantageous proposal or issue a new solicitation or cancel the procurement process in its entirety.

2.20 COMMENCEMENT OF WORK:

This RFP does not, by itself, obligate the TPA. The TPA's obligation will commence when the contract is approved by the Board or its designee and upon written notice to the respondent. The TPA may set a different starting date for the contract. The TPA will

not be responsible for any work done by the respondent, even work done in good faith, if it occurs prior to the contract start date set by the TPA.

2.21 INSURANCE REQUIREMENTS:

Prior to the effective date of the Contract, it shall be the responsibility of the successful respondent to provide evidence of the minimum amounts of insurance coverage specified in Attachment 1, Section 15, to Palm Beach Transportation Planning Agency, Attention: Executive Director, 2300 North Jog Road, West Palm Beach, FL 33411.

The successful respondent shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Contract, insurance coverages and limits (including endorsements) as described herein (see Attachment 1, Section 15). Failure to maintain the required insurance will be considered default of the Contract. The requirements contained herein, as well as TPA's review or acceptance of insurance maintained by the successful respondent, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the successful respondent under the Contract.

2.22 INDEMNIFICATION BY THE TPA BY THE SUCCESSFUL PROPOSER

The Successful Proposer shall indemnify, and hold harmless the TPA, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Successful Proposer and other persons employed or utilized by the Successful Proposer in the performance of the services under the Contract.

2.23 TAXPAYER IDENTIFICATION NUMBER

The Successful Proposer(s) shall provide the TPA with their Taxpayer Identification Number prior to being recommended for award of any Contract resulting from this solicitation.

2.24 FEDERAL TRANSIT ADMINISTRATION REQUIRED PROVISIONS.

This Project may be funded with assistance from the Federal Transit Administration ("FTA"). If so, the TPA will follow, and require the Successful Proposer to comply with, all applicable third party procurement policies in accordance with FTA Circular C4220. If (Third Party Contracting Guidance). Proposers are hereby advised that the applicable FTA required contractual provisions set forth Exhibit C-1 in the Sample Contract shall be set forth in any Contract resulting from this RFP. By submitting a Proposal, Proposers acknowledge and agree that the Successful Proposer shall be required to comply with the provisions in the Sample Contract if awarded the Contract.

2.25 FEDERAL HIGHWAY ADMINISTRATION REQUIRED PROVISIONS.

This Project may be funded with assistance from the Federal Highway Administration ("FHWA"). If so, the TPA will follow, and require the Successful Proposer to comply with, all applicable third party procurement policies in accordance with the Regulations of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time. Proposers are hereby advised that the applicable FHWA required contractual provisions set forth Exhibit C-2 in the Sample Contract shall be set forth in any Contract resulting from this RFP. By submitting a Proposal, Proposers acknowledge and agree that the Successful Proposer shall be required to comply with the provisions in the Sample Contract if awarded the Contract.

2.26 AUTHORIZED SIGNATURE:

The authorized representative signature required on all Proposals and the Contract must be made by an officer of the company (if applicable).

Remainder of this page intentionally blank

SECTION 3 - SCOPE OF WORK/SERVICES

The TPA is requesting Proposals from experienced individual(s), group(s), or company(ies), to provide the Services described herein for the TPA.

3.1 TPA AND PROJECT BACKGROUND.

The Palm Beach TPA is a federally mandated transportation policy-making board located in West Palm Beach, Florida. The TPA Board is made up of elected officials representing Palm Beach County, all 39 Palm Beach municipalities, Palm Beach County Public Schools, Palm Beach County Transit and the South Florida Regional Transportation Authority (SFRTA/Tri-Rail). Its mission is to influence the expenditure of federal and state funds to provide a regional transportation system that ensures the safe and efficient mobility of people and goods, optimize transit opportunities, and enhances the environmental and economic well-being of Palm Beach County.

The TPA desires to implement an integrated system for the administration, accounting, payroll, budgeting and human resources functions of the agency. The TPA has been hosted by Palm Beach Board of County Commissioners for its basic accounting functionality since its establishment in 1977. The TPA utilizes a CMS Advantage platform coupled with Crystal Reports for accounting and budgeting responsibilities. Payroll, Timekeeping and Human Resources Documentation is managed through an HRIS system maintained by Palm Beach Board of County Commissioners. Additional core functions are achieved with paper documents and Microsoft Excel based tools.

The TPA's system must increase employee productivity and improve its service to the community. The system must be powerful, reliable, and user-friendly. The TPA places a particular emphasis on ensuring the security of its employees' personal information, and expects the system provider to conform to the established data security standards of the industry.

This project will migrate the TPA's core financial processes including accounting, payroll, timekeeping, and budgeting activities to an independent system directly under its own control. The TPA aims to select an integrated and open business suite of applications that will enable appropriate information to be shared across the organization as well as to streamline interfaces to current and future third-party systems used by the TPA.

The Palm Beach TPA's financial management system must comply with the requirements set forth in 2 CFR 200.302.

3.2 CURRENT OPERATIONAL ENVIRONMENT.

The TPA currently uses CMS Advantage, an ERP solution operated by Palm Beach Board of County Commissioners and provisioned to the TPA to house its current financial system of records containing the TPA's data used for financial reporting, including general ledgers, budgets, purchasing, receiving accounts payable and grant management.

Specialized reports and documents are currently created using Excel Workbooks, Macros and database functions.

The TPA has two (2) primary financial professionals with full access and capabilities within the system. Two (2) additional staff members have limited access to record received goods/services within the system.

Separate permission sets for human resource modules is required. Two (2) staff members and the two (2) financial professional will require administrative/full access to the human resources module.

All staff can view their own human resources portals including submitting leave requests, view leave balances, review employment information, view/edit personal information such as address, & sign up for Direct Deposit

Access for the Executive Director to view dashboard reports is preferable.

3.3 CURRENT TECHNICAL ENVIRONMENT.

A Microsoft Active Directory-based computing environment comprised of approximately 20 Windows-based computers and 15-20 users. The computers are a mixture of traditional laptops, desktops and some tablet devices using the Microsoft Windows 7, 8, and 10 operating systems and locally installed versions of Microsoft Office 2016.

The email system is a hosted Microsoft Exchange-based environment with user access being provided using the Outlook mail client and mobile devices. There is a centralized file and print environment. There are no database or email integration backup agents used, as they are not applicable to the environment.

3.4 ERP SYSTEM SOLUTION.

The TPA is requiring that Proposers propose a complete, hosted ERP solution, including software, hardware specifications, project management, and other technology services for the entire scope of the project that may or may not include components owned by the proposer.

An outline of the required software system solution has been provided as follows:

A. Software Modules:

- | | |
|---------------------------|-----------------------------------|
| (1) Accounts Payable | (10) General Ledger |
| (2) Payment Processing | (11) Human Resources |
| (3) Vendor Management | (12) Miscellaneous Billing and AR |
| (4) Bank Reconciliation | (13) Payroll |
| (5) Budgeting | (14) Project and Grant Accounting |
| (6) Cash Management | (15) Purchasing |
| (7) Contract Management | (16) Time and Attendance |
| (8) Fixed Assets | (17) Document Management |
| (9) General and Technical | |

B. Required Services:

- | | |
|---|---|
| (1) Project Management | (7) Implementation and Training Services |
| (2) Hardware design and installation consulting | (8) Change Management |
| (3) Software Installation | (9) Knowledge Transfer to Staff |
| (4) Data Conversion | (10) System Documentation Development |
| (5) Report Development | (11) Ongoing Hosting, Support, and Maintenance Services |
| (6) Integration and Interface Development | |

C. Optional Services

- (1) Software Modifications
- (2) Operational Redesign Assistance

3.5 FUNCTIONAL REQUIREMENTS:

The requirements defined in this section contain the overall general functions of the requested software solution. The primary objective of the TPA in implementing a new system is to provide a more integrated information system environment that will eliminate the redundant entry of data, provide improved system capabilities, provide improved access to data, and streamline overall operations.

Identified in the attached Excel spreadsheet (version 2016) are a number of requirements that must be addressed in the Proposal.

These requirements are considered mandatory in implementing the complete solution. Together they define a system that will operate efficiently in the proposed computer environment while providing a high level of flexibility in meeting the TPA's current and future data needs. Proposers must replace C3 in the Proposer Instruction Tab with the Proposer's Company Name which will be repeated and printed for each subsequent module. The Priority column includes one of the following entries to indicate the importance of the specification/report to the TPA:

"H" - High:	This would be a feature that the TPA already has and uses in its current software or, alternatively, is available and/or tracked in a shadow system (i.e., spreadsheet, document, external database, etc.).
"M" - Medium:	This is a feature that the TPA would like in the new system that is not currently being tracked or is not existing functionality.
"L" - Low:	This would be a feature that, while of interest, is not applicable at this time or something that could be a future deployment.

Each Proposer should review the specifications and reports listed in each subsection and respond as to their availability within the proposer's software system. The responses should be entered under the "Availability" column of each form as follows:

Y	Functionality is provided out of the box through the completion of a task associated with a routine configurable area that includes, but is not limited to, user-defined fields, delivered or configurable workflows, alerts or notifications, standard import/export, table driven setups and standard reports with no changes. These configuration areas will not be affected by a future upgrade. The proposed services include implementation and training on this functionality, unless specifically excluded in the Statement of Work, as part of the deployment of the solution.
R	Functionality is Reporting Tools provided
T	Functionality is provided by proposed third party functionality (i.e., third party is defined as a separate software Vendor from the primary software Vendor). The pricing of all third party products that provide this functionality MUST be included in the cost proposal.
M	Functionality is provided through customization to the application, including creation of a new workflow or development of a custom interface, which may have an impact on future upgradability.
F	Functionality is provided through a future general availability (GA) release that is scheduled to occur within 1 year of the proposal response.
N	Functionality is not provided

Use the Cost column for "M" or "F" responses to estimate the cost to be incurred by the TPA to secure the specification/report. Use the Comment column to provide additional

comments pertaining to your response for that item.

The **Product(s)** column is to be used to specify what product (e.g. product name / software module) is proposed. The cell C4 in the form which currently reads "*Primary Vendor Module Name Here*" must be updated. This name will be automatically populated in the **Product(s)** column for each specification in the module. The automated values in this column must be updated for any exceptions where a different or additional product is required to satisfy the requirement.

Proposals submitting a multi-product solution should complete a General and Technical module specification response for each product.

Additional details and descriptions related to the specifications of the requested ERP System and Services may be found in Section 4.5 of this RFP.

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3.6 SUMMARY OF KEY TRANSACTION VOLUMES

A summary of key transaction and operating volumes and standards is included below. These volumes and standards reflect actual & estimated amounts for the current environment.

Operating Volumes/Standards	
Palm Beach Transportation Planning Agency	
Total Staff (Full time: 1FTE)	15
Total Staff (Part time: 0.5 FTE)	0
Number of IT users	0
Number of ERP System Users (Total Current)	4
Number of ERP System Users (Anticipated Future)	1
Number of Users (Anticipated Future) Per Area	
Accounts Receivable	3
Purchasing	3
Payroll/Personnel	3
Year End Processing	3
General Ledger/Bank Reconciliation	
Chart of Accounts Structure	XXX-XX-XXXX
Chart Segment One Name/Account Mask	Fund/XXX
Chart Segment Two Name/Account Mask	Department/XX
Chart Segment Three Name/Account Mask	Object/XXXX
Fiscal Year End	June 30
Number of Funds	10
Number of Manual Journal Entries (Monthly)	10-20
Number of Cash Accounts	1
Number of Bank Accounts	5
Budgeting	
Number of Approval Levels	2
Budget Frequency	Yearly
Number of Funds Budgeted	5
Fixed Assets	
Fixed asset tagging?	Preferable
Tracking / Reporting of Non-depreciable Assets?	No

Project/Grant Accounting	
Do Projects/Grants Cross Funds?	No
Purchasing/Contract Management	
Number of Requisitions per Month	1-2
Number of Purchase Orders per Month	5-10
Number of Blanket Purchase Orders per Year	1-2
Number of Invoices Without a Purchase Orders per Month	10-15
Accounts Payable	
Number of Vendors Maintained in Accounts Payable System	150
Frequency of Check Runs	2-3/week
Check Signature Method	Dual
Human Resources and Payroll	
Number of Permanent Employees	15
Number of Part-Time Employees	0
Number of Seasonal Employees	1
Number of Bargaining Units	0
Number of Applicants (Annually)	2-3
Payroll Frequency	bi-weekly

Remainder of this page intentionally blank

SECTION 4 - PROPOSAL REQUIREMENTS

4.1 FORMAT

Respondents shall submit one (1) unbound original proposal and one (1) complete electronic copy of the Proposal, including all signed and authorized forms, in pdf format with accompanying Microsoft Excel Workbooks (specified in section 3) in .xlsx format and demo videos (specified in section 3) in .wmv format on a USB flash drive.

All Proposals must be sent on 8 ½" x 11" documents with a maximum of 10 pages (not including transmittal letter, Table of Contents, resumes and required forms) with a minimum of 10pt text.

4.2 TABLE OF CONTENTS

Proposals should contain a Table of Contents. The Table of Contents outlines in sequential order all of the areas of the proposal and it allows for clarity and ease of review of the proposal.

4.3 LETTER OF TRANSMITTAL

Proposals should contain a Letter of Transmittal addressed to contact person identified in section 1.7, and should, at a minimum, contain the following:

- A. Identification of respondent, including name, address and telephone number.
- B. Proposed working relationship between respondent and subcontractors, if applicable.
- C. Name, title, address, telephone number, and e-mail address of contact person during period of proposal evaluation.
- D. Signed by a person authorized to bind respondent to the terms of the proposal.

4.4 EXECUTIVE SUMMARY

Provide a brief summary describing the Proposer's ability to perform Work requested in this Solicitation, a history of the Proposer's background and experience providing services, the qualifications of the Proposer's personnel to be assigned to these project, the subcontractors, Subcontractors, and/or suppliers and a history of their background and experience, a list of all projects in the last five (5) years and the timeliness in which they were completed, and any other information called for by this Solicitation which the Proposer deems relevant, including restating any exceptions to this Solicitation. This summary should be brief and concise to apprise the reader of the basic services offered, experience and qualifications of the Proposer, Staff, Subcontractors, and/or Suppliers.

4.5 TECHNICAL PROPOSAL

Proposals shall contain all of the documents listed below, each fully completed, signed, and notarized as required. Failure of a respondent to provide the required information is considered sufficient cause to deem the proposal non-responsive.

The items(s) marked by an asterisk (*) should be a part of the proposal; however, if these items are omitted, the respondent must submit the item(s) upon request from the TPA within a time frame specified by the TPA (normally within two working days of request) or the proposal shall be deemed non-responsive. All other items must be submitted with the proposal or it shall be deemed non-responsive.

Notwithstanding these proposal requirements, the TPA reserves the right, at its sole discretion, to waive any minor irregularity relating to the proposal. Upon request, it shall be the responsibility of the respondent to address the determined minor irregularity within a period specified by the TPA (normally within two working days of request). Failure of a respondent to provide the required information within the specified period is considered sufficient cause to deem the proposal non-responsive.

Each of the following requirements should be addressed in separate sections of the proposal.

A. Application Software

The Proposer shall provide a general description of the application and how it will meet requirements of this RFP. This section must address, at a minimum, the following items:

1. Describe your overall proposed technology solution.
2. Describe the product direction for the company, including time frames.
3. Describe unique aspects of the Proposer's solution in the marketplace.
4. Describe components of the solution that are industry standards versus being proprietary to the Proposer.
5. For third party products proposed that are integrated with the Proposer's solution provide the following for each product:
 - (a) Reason that this product is a third-party product versus being part of the software Proposer's solution,
 - (b) Extent to which this third-party product is integrated with the Proposer's solution.

B. Technical Infrastructure

Proposers should identify where conflicts may exist between their solution and current technologies being used in the TPA as described in Section 3 of the RFP.

1. Proposer Hosted Solution

- (a) Please describe your hosted model, including: hosting, integration, help desk, provisioning and desktop management capabilities, deployment model (dedicated servers, shared environment, etc.), impact to the TPA's network and bandwidth, and any partners that may be involved in service delivery.
- (b) Please describe your proposed service level agreement, including any tiered levels of service, response times, and standard metrics.
- (c) Please describe your support model, including: cost structure for support calls.
- (d) Please describe your data center and storage facilities, including: locations, staffing, physical security, environmental controls (including redundant power), redundancy/load balancing capabilities, data backups and disaster recovery capabilities.
- (e) Please describe your logical security, including: firewall security, authentication controls, and data encryption capabilities.
- (f) Please describe your change management, upgrade, and patch management policies & practices?
- (g) Describe your systems administration/management capabilities including: monitoring of performance measures, intrusion detection, and error resolution.
- (h) Describe how you will help the TPA move to a new operation at the end of the contract term or if the contract is terminated, including the process for notifying of termination.
- (i) Please provide a copy of your most recent SSAE 16 Type II audit.

2. System Performance

- (a) System response time must not impede the ability for staff to perform their required job functions using the system. Will your system be available 99.5% of the time, except for planned downtime?
- (b) Can you guarantee a 3-second maximum response time?
- (c) What are your guarantees on system performance?

3. Security:

- (a) Describe the identification and authorization capabilities of your proposed solution for users.
- (b) Describe how your system interoperates with Active Directory.
- (c) Describe the security audit capabilities of your proposed solution.

- (d) What functions does your proposed system have to protect the privacy of information designated “private” (e.g. personally identifiable, SSN, credit card, ACH, HIPAA, etc.) that it processes or stores?
- (e) What will you do to address vulnerabilities in your product discovered subsequent to us deploying your code? In what time interval will they be fixed (Critical and non-critical)? At what cost to the TPA?
- (f) What is your process for notifying the customer and fixing bugs once they have been identified?

4. Hardware and Storage Environment

- (a) Describe the proposed computer hardware and storage environment to support the system. In the event that there are multiple computer systems available, list all options. Indicate which is the preferred hardware platform and why. List the conditions in which the preferred hardware platform would change. A hardware configuration, which takes into account the size of the organization, application modules, database size, and anticipated growth, must be provided.
- (b) Describe your proposed information architecture/model (preferably using a PowerPoint). This should depict data models, taxonomy, data elements, coding structures, a process for standardizing on a particular coding structure, data definitions (employees, vendors, invoices, etc.)

4.6 IMPLEMENTATION PLAN

Provide an implementation plan in narrative format supported by an activity-level project plan that details how the proposed solution is to be implemented. This implementation plan should include the following elements as further described below:

- | | |
|---|---------------------------------------|
| 1. General Implementation Approach; | 7. Change Management Approach; |
| 2. Hardware, Software & Storage Design and Installation Consulting; | 8. Testing; |
| 3. Data Conversion Plan; | 9. Operational Redesign Approach; |
| 4. Report Development; | 10. System Documentation and Manuals; |
| 5. Integrations and Interfaces; | 11. Disaster Recovery Plan; |
| 6. Training; | 12. Knowledge Transfer |

The Proposer should not be constrained to only include the above items in the proposal if the Proposer feels that additional elements may add value to the overall implementation.

It is expected that the Proposer will lead the efforts in each of the implementation areas described below unless stated otherwise. Further details on what is to be provided as part of the Proposers implementation plan are included in the following

subsections.

1. General Implementation Approach

Provide a general overview of the implementation approach you plan to use for the TPA that includes addressing the following items:

- (a) Describe how you transition from the sales cycle to the implementation phase of the project.
- (b) Describe key differentiators of the approach as it relates to implementing a solution on time, within budget and with the ability to meet the needs of a diverse client like the TPA.
- (c) Describe how you conclude on a preferred implementation phasing of software modules. What is your recommended approach for this implementation?
- (d) Describe your approach towards running parallel systems for a period of time.

Any unique tools, techniques or methods that you use should be described in this section.

2. Project Management Approach

The TPA expects the Vendor to provide project management resources leading to the successful deployment of the system. The project manager will work as a team member with the TPA's CFO. It is expected that this project manager will be "on the ground" as appropriate to team with the CFO. This project manager can be an employee of the Proposer or a partner of the Proposer. In either case, the costs for the project manager should be included and clearly denoted in the pricing section of this RFP.

Provide an overall description of the Proposer project management approach towards this type of engagement and projected timing for major phases.

Provide a high-level work plan for achieving the successful deployment of your proposed system.

3. Data Conversion Plan

It is anticipated that data conversion will occur when migrating to the new application. The Proposer is expected to assist the TPA in the conversion of both electronic and manual data to the new system. It is expected that the TPA will be responsible for data extraction from current systems and data scrubbing and data pre-processing and that the Proposer will be responsible for overall data conversion coordination, definition of file layouts, and data import and validation into the new ERP. Please provide pricing for data conversions in the associated Microsoft Excel pricing spreadsheet.

- (a) Describe your general approach towards data conversion and how you would work with the TPA to conclude on what should be converted.
- (b) Please describe your recommended approach toward retention of legacy data.
- (c) Describe the entry process for users entering small amounts of converted data.

4. Report Development

For specific reporting requirements, it is anticipated that the Proposer will take the lead on developing any reports required as part of the initial deployment of the system. The Proposer is expected to provide specialized knowledge and information to the TPA staff during the development of needed reports, via technical training on the tools used for report development, database schema and architecture, etc.

Provide information on your reporting approach including:

- (a) Description of various methods of reporting including Business Intelligence.
- (b) Methods for the TPA to identify, specify, and develop required custom TPA reports during the implementation.
- (c) A listing of standard reports available in the system out of the box.

5. Integrations and Interfaces

It is expected that information generally would need to be entered only once into the system. Modules within the system should be integrated in real-time with each other such that batch processes are not required to transfer information from one area of the system to another unless that is the preference of the TPA. Existing TPA interfaces between core modules that may currently exist (e.g., AP posting to GL) or shadow systems that will likely be replaced are not included as they are assumed to be included in an integrated ERP System.

The Microsoft Excel pricing sheet contains a listing of current and/or desired application interfaces. Please provide pricing for interface development in the associated Microsoft Excel pricing spreadsheet.

In addition:

- (a) Describe the extent to which the various modules are integrated together versus being purchased separately and interfaced
- (b) Describe your approach towards interfacing and integration with other solutions including use of specific tools, methods and standards.
- (c) Describe data exchange standards (e.g. XML, Web Services, or EDI) supported or provided by your product.

- (d) As it pertains to the TPA's current technical environment described previously, identify potential issues for integrating with specific technologies that are used within the TPA.
- (e) If local customizations are made, do you provide any tools or assistance to easily incorporate customizations into new version/releases of your software?

6. Training

Given the size of the TPA, it is intended for the Proposer to provide all end user and technical training on-site through implementation, including:

- (a) End user implementation training will be provided by the Proposer and include joint participation by the relevant TPA staff supporting the process area in the new software system.
- (b) General timeframe in which training will be conducted
- (c) The Proposer must list the nature, level, and amount of training to be provided in each of the following areas:
 - User training
 - Other staff (e.g., executive level administrative staff)

7. Change Management Approach

The TPA recognizes that a movement from the current environment to a new solution will present change management challenges. The Proposer should clearly identify their approach towards Change Management including any unique approaches or tools that will be used.

8. Testing

The Proposer should describe their recommended approach to the following types of testing that are anticipated to be performed on the project and the type of assistance they anticipate providing to the TPA related to such testing:

- (a) System testing
- (b) Integration testing
- (c) Stress/performance testing
- (d) User acceptance testing (UAT)

9. Operational Redesign

With the deployment of a new application, the TPA wishes to take advantage of capabilities within the software that provide support for operational improvements. Proposers are requested to describe their approach towards operational redesign including discussion on the optimal time in which to conduct

redesign as it relates to implementation of the new software.

10. System Documentation and Manuals

The Proposer is expected to provide user manuals and online help for use by the TPA as part of the initial training and on-going operational support. Additionally, the Proposer is expected to provide technical documentation.

- (a) Describe what documentation (user guide, technical guide, training materials, etc.) is available on the system proposed and any related costs.
- (b) Describe what types of documentation you anticipate developing during the course of the project.

11. Disaster Recovery Plan

Please describe the services you provide pertaining to disaster recovery, if any, as part of your proposed solution.

12. Knowledge Transfer

The Proposer should describe their process for ensuring that a transfer of knowledge occurs back to TPA staff such that staff is capable of supporting and maintaining the application in the most proficient manner once the Proposer implementation engagement is complete.

13. Staffing Plan

- (a) The Proposer must detail the type and amount of implementation support to be provided (e.g., number of personnel, level of personnel, time commitment, etc.). Include resumes for all personnel that will be assigned to the project. If the Proposer is using a subcontractor, please include information on subcontracting staff being used and their specific role on the project.
- (b) Please provide an overall project organizational structure for TPA staff involvement during the project. Identify the roles and responsibilities of each component of this structure. This includes an appropriate governance structure in which to manage the project.
- (c) Provide an estimate of TPA full-time equivalents (FTE) you expect to engage throughout the duration of the project. Include an estimate for each role among all TPA staff.

14. Ongoing Support Services

Please specify the nature and conditions of any post-implementation support options including:

- (a) Post-go live support that is included in the proposal response

- (b) Onsite support (e.g. system tuning, application configuration, interface issues, report development, network optimization, user training and tips to optimize the user experience)
- (c) Telephone support,
- (d) Help Desk services (If there is a service level agreement for your help desk, please provide a copy with your RFP response.)
- (e) Toll-free support line
- (f) Users group (i.e. - information about it, where it is held and when. If no, are you planning one?
- (g) Online knowledgebase (i.e. - how it is accesses, who updates it, etc.)

15. TPA Staff Involvement

Provide an estimate of TPA staff FTE required for ongoing support and maintenance of the system. Include an estimate for each role and a total for all TPA staff.

- (a) Describe your maintenance programs and options with associated pricing.
- (b) Describe and provide pricing for any “software as a service” (SaaS) model that you offer (where there is no up-front license fee, but instead a monthly charge which may include maintenance).

4.7 FUNCTIONAL SYSTEM REQUIREMENTS

Responses to the requirements referenced in section 3 of this RFP must be provided in this section of the Proposer's response. Use the Microsoft Excel specification spreadsheet provided and attach added explanation pages as necessary. **Please note: The response to these requirements should be provided in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.**

4.8 PRICE PROPOSAL

A. ERP Price Proposal Workbook

Complete the pricing forms that have been provided in the associated Microsoft Excel pricing spreadsheet. It is the responsibility of the Proposer to ensure the accuracy of the pricing provided as part of your Proposal. Any errors in providing an accurate price response due to inaccuracies in the provided templates are the sole responsibility of the responding Proposer. If there is not enough space to describe the pricing on these forms, please attach a separate pricing page and provide the pricing information in the same type of format so that it is easy to understand. The TPA requests a firm, fixed price for each of the components

described below that are included on the attached Microsoft Excel pricing spreadsheet as separate tabs:

- A. Vendor Checklist (including Hosting/Licensing Model, Travel & Lodging Costs, and Discount)
- B. Proposal Summary (no direct input required)
- C. Module Summary (no direct input required)
- D. Application Software
- E. Other Software
- F. Hardware
- G. Implementation Services
- H. Train-the-Trainer Training
- I. End-User Training
- J. Interfaces
- K. Modifications
- L. Other Implementation Services

Pricing forms shall remain in the original Excel format. Pricing should include the complete costs for the solution including all travel and operating costs. The Proposer shall be responsible for all design, information gathering, and required programming to achieve a successful implementation. All prices quoted must include all hardware, equipment, software, and services necessary to make the system specified fully operational for the intent, function, and purposes stated herein. These costs must be included in the base proposal.

The TPA will not consider time and materials pricing. Proposers shall provide firm and fixed pricing based on the functionality described. For each item, indicate if the cost is one-time, annual, or other.

The Proposer shall provide price information for each separate component of the proposed solution, as well as the costs of any modifications necessary to fully comply with the RFP specifications.

If any lump sum amounts are provided, Proposers should indicate in the comments sections what the lump sum consists of.

In the event the product or service is provided at no additional cost, the item should be noted as "no charge" or words to that effect.

In the event the product or service is not being included in the Proposer proposal, the item should be noted as "No Bid".

Proposers shall provide all pricing alternatives in these cost sheets.

Proposer shall provide prices in U.S. dollars.

Proposer shall make clear the rationale and basis of calculation for all fees.

Proposers shall show separate subtotals for the required elements of the proposed solution, and for any layers of optional elements.

Please note: Pricing workbook should be provided in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.

In presenting software license fees, the Proposer shall:

- Explain all factors that could affect licensing fees;
- Make clear what type of license is offered for each price (named user, concurrent user, installed copies, processor-based, etc.);
- Indicate which product versions, operating platform(s), and machine classes are included for each price;
- Make clear the extent of any implementation services that are included in the license fees (installation, configuration, training, etc.)

To the extent possible, Proposers shall show any applicable discounts separately from the prices for products and services

The TPA, during the course of the selection process may decide to purchase a subset of the proposal's components with the initial contract. The TPA requires that Proposers agree for a period of three (3) years from the date of the Proposer's proposal to honor software and services pricing established within the Proposer's proposal response for Proposer proposed components which are not included in the TPA's initial purchase. The price of the proposed components can only be increased by the Proposer during such time period by an amount equal to the annual CPI-U adjustment for the South region or 3%, whichever is less.

The TPA prefers that Proposers provide separate prices for each item in the proposed solution. However, the Proposer is also encouraged to present alternatives to itemized costs and discounts, such as bundled pricing, if such pricing would be advantageous to the TPA.

The TPA reserves the right to pursue direct purchase of all items and services proposed, as well as to obtain independent financing.

B. Price Proposal Form

The proposer shall complete and have notarized the Price Proposal Form (Appendix G) as part of the proposal.

Remainder of this page intentionally blank
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4.9 PROPOSER QUALIFICATIONS

A. Contents of Proposer Qualification Form.

Proposers shall provide documentation that demonstrates their ability to satisfy all of the minimum qualifications requirements to perform the services identified within this RFP. Proposers who do not meet the minimum qualification requirements or who fail to provide supporting documentation and/or affidavits as specified herein will be deemed non-responsive. If a prescribed format or required documentation for the response to minimum qualification requirements is listed below, Proposers must use said format and supply said documentation to be considered responsive.

Each Proposer shall complete and submit the Proposer Qualification Form (Appendix C). The Proposer Qualification Form shall include the information requested therein and shall address each item on a point-by-point basis. To the extent that an organization is comprised of one or more persons or business entities, information relative to each member of such "team" shall be provided.

In addition to the information requested in the Proposer Qualification Form, Proposer shall provide the following information to supplement the Proposer Qualification Form within Chapter 7 of the Proposal:

1. Any business owner who has previously operated a business under another name must include a description of the previous business. Failure to include such information will be deemed as intentional misrepresentation by the TPA, and will render the Proposer's Proposal non-responsive.

B. Prior Implementation Referral Form

Proposers shall provide five (5) government contract references using the Prior Implementation Referral Form (Appendix D) for similar implementations to those requested in this RFP.

C. Financial Stability.

Each Proposer shall provide a statement in writing, signed by a duly authorized representative, stating the present financial condition of the Proposer, and disclosing information as to Proposer's involvement in any current bankruptcy proceedings or has been involved in any bankruptcy proceedings within the last three (3) years.

D. Litigation History.

Each Proposer shall provide a statement describing any prior or pending litigation or investigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees, subcontractors or subcontractors is or has been

involved within the last three (3) years.

E. Business Information Form.

Each Proposer shall complete and submit the Business Information Form (Appendix A). To the extent the information is not provided for on the form, Proposer shall supplement the Statement of Organization with the following information to be included within the Proposal:

- A) Provide an organizational chart showing all individuals, including their titles, whom will perform any work on the Contract. This chart must clearly identify the Proposer's employees and those of the subcontractors or subcontractors.
- B) Describe the experience, qualifications, and other vital information, including relevant experience on similar contracts, of all key individuals and subcontractors or subcontractors who will perform work on the Contract. This information shall include functions to be performed by the key individuals and the subcontractors or subcontractors.
- C) Provide resumes with job descriptions and other detailed qualification information on all key personnel who will be assigned to the Contract, including any subcontractors or subcontractors. All key personnel includes (but is not limited to) all partners, managers, seniors and other professional or technical staff that will perform work on the Contract.

F. Affidavits and Acknowledgements.

Proposer shall complete and submit all affidavits, forms, certifications and acknowledgments set forth in the appendices of this RFP (Section 6) and provide such documents as part of Proposer's Proposal in the format set forth in Section 4.1.

G. License and Maintenance Agreements.

Proposers shall include sample license and maintenance agreements for all components of the recommended solution (i.e., hardware, software, operating system, database, etc.). Indicate the basis on how licenses are determined.

4.10 DEMO VIDEOS

The proposer shall submit demo videos in Windows Media Video format (.wmv). Each demo video shall originate from the login portal/dashboard and illustrate the following tasks:

- A. Demo shall show the entry of an invoice for a new vendor. This video shall illustrate the steps to enter the invoice information, do a quick add for the vendor and save the invoice for payment approval. The addition of a code to

identify the transaction for exception/inclusion in specific reports is requested as well.

- B. Demo shall view a monthly Income Statement or similar report. A single expense from the period shall be selected and drilled down to view the transaction. The demo shall also highlight the simplest method to view all documents related to the transaction i.e. Purchase Order, Receiver, Invoice and Check.
- C. Demo shall provide the view for a non-financial staff member perspective of HR portal to see the most recent paystub and review available leave balances.
- D. Demo shall provide a view of large vendor contract with drill down to view individual invoices paid under that contract, Procurements documents and current available budget.

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SECTION 5 - SAMPLE AGREEMENT

(Agreement No. 2018-01)

AGREEMENT BETWEEN PALM BEACH TRANSPORTATION PLANNING AGENCY AND _____ (CONTRACTOR)

This Agreement is made as of this _____ day of _____, 2018, 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") and _____, a _____ Company, authorized to do business in the State of Florida and whose principal place of business is located at _____ (hereinafter referred to as the "CONTRACTOR").

WITNESSETH

WHEREAS, the TPA, pursuant to its Procurement Policy, solicited proposals from firms to perform Software Services in connection with the Project; and

WHEREAS, Proposals were evaluated and ranked by an Evaluation and Selection Committee; and

WHEREAS, the TPA Governing Board ("Board") has selected the CONTRACTOR, upon the recommendation of the Evaluation and Selection Committee, as the highest ranked firm to perform ERP System Implementation and Service Provision in connection with the Project; and

WHEREAS, the TPA has requested the services of the CONTRACTOR in support of TPA's Unified Planning Work Program (UPWP) as more fully described in the Scope of Services (also referred to as the "Services" "Scope" or "Work") attached hereto as Exhibit A and incorporated into and made a part of this Agreement; and

WHEREAS, the Board has selected the CONTRACTOR, upon the recommendation of the Evaluation and Selection Committee, as the highest ranked firm to perform ERP System Implementation & Service Provision in connection with the Project; and

WHEREAS, on _____, the Board ratified the ranking of Proposals received in response to **RFP No. 2018-01** and authorized the appropriate TPA officials to execute an agreement with the CONTRACTOR; and

WHEREAS, the TPA agrees to fund the costs associated with the performance of the Scope of Services; provided, however, that this funding obligation is contingent upon the Florida Department of Transportation's (hereinafter "FDOT") approval of this Agreement, a determination by FDOT that said costs are "eligible project costs" for which the TPA will be reimbursed, FDOT's approval of each invoice submitted by the TPA to FDOT for reimbursement under the Transportation Planning Agency (TPA) Agreement, Joint Participation Agreement (JPA) or any other TPA/FDOT agreements, and CONTRACTOR's performance of the Agreement in accordance with its terms.

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. The facts set forth above, in the preamble to this Agreement, are true and correct and incorporated into and made a part of this Agreement by reference.

SECTION 2. PURPOSE. The purpose of this Agreement is to set forth the various duties, rights, and obligations of parties regarding the provision of services to the TPA.

SECTION 3. REPRESENTATIVES. The TPA's representative during the performance of this Agreement is the Executive Director of the TPA, and the CONTRACTOR'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 the CONTRACTOR's representative shall not affect the responsibility for the provision of the ERP System Implementation & Services under this Agreement unless agreed to in writing by the TPA.

SECTION 4. EFFECTIVE DATE, TERM, AND RENEWAL. This Agreement shall take effect on January 1, 2019 and shall remain in full force and effect through June 30, 2021. The CONTRACTOR hereby grants to the TPA the option to extend the term of this Agreement for twenty-four (24) additional months or two (2) additional twelve (12) month periods as deemed appropriate by the TPA. If the TPA elects to exercise the option(s), the TPA will notify the CONTRACTOR 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.

The parties hereto may further extend this Agreement by mutual consent, in writing, prior to the expiration of the then current term. This provision in no way limits either party's right to terminate this agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.

SECTION 5. SERVICES.

A. All services will be obtained by the TPA, through the TPA Governing Board or the TPA's Representative, by use of separate Work Orders issued after consultation and discussion with the CONTRACTOR. The parties shall establish a Work Order Form which will be used by the TPA to issue work orders. Each Work Order issued will further define the tasks or services to be provided by the CONTRACTOR, any deliverables, documents, additional services or products that will be created, produced or accomplished, the schedule, including the timeline for the performance of each task and subtasks, as determined appropriate by the TPA, and expected delivery date of any deliverables, the negotiated not to exceed fee to be paid to the CONTRACTOR for the provision of each task or service, and the not to exceed amount of reimbursable expenses, if any. The parties acknowledge that the Scope of Services described in Exhibit A may be further refined through the work order process, and that the final determination of all services to be ordered and the cost of such services, is vested in the TPA. The CONTRACTOR shall not commence any work under any Work Order until after the TPA's Representative issues a signed Work Order.

B. The Federal Transit Administration ("FTA") Required Contractual Provisions

(attached hereto as Exhibit "C-1"), and the Federal Highway Administration ("FHWA") Required Contractual Provisions (attached hereto as Exhibit "C-2), collectively hereafter referred to as the "Federal Contractual Provisions" are attached hereto and made a part hereof, collectively as Exhibit "C". The applicable Federal Contractual Provisions apply to this Agreement and the services to be provided herein.

C. The parties agree that the Services, as specified in Exhibits "A" and "B", (hereinafter collectively referred to as the "Scope of Services" or "Services") contain the description of Contractor's obligations and responsibilities and are deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

D. Upon the request of the TPA, the CONTRACTOR representatives will meet with the TPA's staff, officials, members of the public, and participate in meetings of the TPA's Governing Board at the times and places required by the TPA to discuss the status and outcome of the task(s), Work or Scope, as well as the need for revision to a particular task(s) or the performance of additional work. Such meeting(s) and public participation activities, shall be a part of the cost established for each task, and no additional compensation will be due to the CONTRACTOR for these activities. The CONTRACTOR will attempt whenever possible to achieve cost effectiveness by consolidating meetings, limiting travel and taking other actions to improve efficiency. Multiple staffing at meetings, hearings, conferences, etc. will not be compensated unless prior approval has been obtained from the TPA's representative.

E. The CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the Work contemplated under this Agreement.

SECTION 6. PAYMENTS.

A. The maximum amount to be paid by the TPA to the CONTRACTOR under this Agreement is _____, AND NO/100 Dollars (\$_____.00).including all out-of-pocket or reimbursable expenses. The amount of compensation payable by the TPA to CONTRACTOR shall be based upon the amounts negotiated between the parties as indicated on attached Exhibit "B", which amount shall be accepted by CONTRACTOR as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by CONTRACTOR that these amounts are the maximum payable and constitute a limitation upon TPA'S obligation to compensate CONTRACTOR for its Services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services

The CONTRACTOR acknowledges that this Agreement is executed only for that portion of the value of the Services to be rendered or agreed to be paid each successive year of the Agreement. The amount allocated for each year is contingent upon an annual appropriation for such purposes by the State, the availability of funds and the TPA's and/or Palm Beach County's allocation of funds each year for the purposes of this Agreement.

B. The CONTRACTOR's charges for all work provided under any Work Order issued by the TPA shall not exceed the hourly rates set forth in Exhibit B. Premium rates

will not be paid for overtime work. Hourly rates for services to be performed by personnel not directly employed by the CONTRACTOR 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. Reimbursable expenses as authorized by work order and incurred during the CONTRACTOR's performance, shall be limited to:

1. Pre-approved travel outside of Palm Beach County.
2. Out-of-pocket expenses clearly associated with performance of the Scope and explicitly identified in an authorized work order.

Invoices for reimbursable travel expenses, if any, shall also be submitted in accordance with Chapter 112.061, F.S., and FDOT travel form number 300-000-01, as it may be amended or replaced from time to time. If FDOT establishes rates lower than the maximum provided in Chapter 112, F.S., the lower rates will apply. The TPA shall not pay for firm surcharges added to third party vendor charges associated with any Out-of-pocket expenses. Routine expenses will not be separately compensated. Charges for travel time shall be billed on an incremental basis and at no more than one-half (1/2) of the normal hourly rate. Travel should be combined with travel for other clients when possible and if so combined, travel charges and time shall be reduced to reflect the other entity's proportionate share of the cost.

D. The CONTRACTOR shall invoice the TPA for deliverables completed or services rendered: on a monthly basis, within fifteen (15) business days of the end of the monthly invoicing period. An alternatively agreed upon invoicing period may be accepted at the discretion of the TPA Executive Director. CONSULTANT's charges for all work provided under any Work Order issued by the TPA shall not exceed the rates set forth in Exhibit B. The CONTRACTOR shall submit ALL ORIGINAL invoices to: Palm Beach Transportation Planning Agency, 2300 N. Jog Rd., 4th Floor, West Palm Beach, FL 33411. Invoices shall be in the format of the TPA Sample invoice (Exhibit D) or TPA approved alternative that contains at minimum the following: CONSULTANT's legal name, address, unique invoice number, dates for invoicing period, invoice date, invoice total, an original signature of an authorized CONSULTANT official, amount previously billed, current amount due, and work order amount remaining. Invoices billing for staff hours shall be accompanied by signed timesheets.

E. The CONTRACTOR shall retain sufficient internal records to support each invoice (e.g. properly executed payrolls, time records, invoices, contracts, vouchers, receipts, or other documents) such 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 and/or expenses have been incurred towards the completion of the Work in conformance with the requirements of this Agreement, the UPWP, 23 Code of Federal Regulations (CFR) 450.314 and Section 339.175, Florida Statutes (F.S.).

F. Invoices received from the CONTRACTOR will be reviewed and approved by the TPA's representative. All invoices shall include the deliverables or timesheets and

allowable reimbursable expenses required to indicate that services have been rendered in conformity with this Agreement. Upon approval by the TPA's representative of the invoice and supporting documentation, the invoice will be released for payment. Invoices will normally be paid within thirty (30) days following the TPA representative's approval. Payments will be remitted to the CONTRACTOR at the address set forth in Section 36 of this Agreement or such other address as is designated in writing by the CONTRACTOR to the TPA.

G. In order for each party to close its books and records, the CONTRACTOR will clearly state "final invoice" on its last and final billing for each work order. This certifies that all services have been properly performed and all charges and costs have been invoiced to the TPA. Since this account will thereupon be closed, any and other future charges, if not properly included on this final invoice, are waived by the CONTRACTOR. All invoices must be submitted within sixty (60) 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 MPO Agreement or Joint Participation Agreement (JPA) with FDOT.

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

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

J. If it should become necessary for TPA to request CONTRACTOR to render any additional services to either supplement the services described in the RFP or to perform additional work, such additional work shall be performed only if set forth in an addendum to this Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees included in Exhibit A.

SECTION 7. 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 United States Department of Transportation (U.S. DOT) or an agency thereof, which funds are to be used for the purposes of this Agreement, and an annual appropriation for the purposes of the Agreement by the TPA and Palm Beach County's Board of County Commissioners. 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 TPA Agreement or JPA with the TPA, fail to fully fund its obligations thereunder, or decline to provide funding approval for any fiscal year of the Agreement. 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 8. 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, drawings, maps, sketches, programs, database reports, and other data developed under this Agreement shall be the property of the TPA. Any modifications made by the TPA to any of the CONTRACTOR's documents without written authorization from the CONTRACTOR, will be at the TPA's sole risk and without liability to the CONTRACTOR.

A. The CONTRACTOR 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, F.S., 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 CONTRACTOR 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 CONTRACTOR acknowledges that it is subject to Florida's Public Records Law and agrees that it shall comply with the requirements of said law. The CONTRACTOR further agrees that the TPA may unilaterally terminate this Agreement (and such termination will be for cause) if the CONTRACTOR refuses to produce or to allow public access to any documents, papers, letters, data, or other material subject to the provision of Chapter 119, F.S., or does not produce or allow access within a reasonable period of time after a request for public records has been received. The CONTRACTOR agrees that it shall not initiate or take any action against the TPA if the TPA terminates this Agreement as a result of CONTRACTOR's failure to comply with Florida's Public Records Law. Notwithstanding anything contained herein, CONTRACTOR further agrees to:

1. Keep and maintain public records that ordinarily and necessarily would be required by the TPA in order to perform the Services;

2. Provide the public with access to public records on the same terms and conditions that the TPA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law;

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;

4. Meet all requirements for retaining public records and transfer, at no cost to the TPA, all public records in possession of the CONTRACTOR upon termination of the Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the TPA in a format that is compatible with the information technology system of the TPA, as determined by the TPA.

SECTION 9. ACCESS AND AUDITS.

A. The CONTRACTOR 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 and the issuance of any audit, whichever comes last. In the event of litigation or settlement of claims arising from the performance of this Agreement, the CONTRACTOR shall maintain such records until notified by the TPA that the litigation or claims have been concluded and resolved. The CONTRACTOR shall maintain all records in Palm Beach County or such other location in the State of Florida approved by the TPA's representative.

B. The CONTRACTOR 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. The Palm Beach County Inspector General, FDOT, the State of Florida Chief Financial Officer, Comptroller or Auditor General, the Federal Transit Administration (FTA) or Federal Highway Administration (FHWA) Administrator or the U.S. DOT or their authorized employees and representatives, and any agency thereof, shall have access to and CONTRACTOR 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 CONTRACTOR's place of business in Palm Beach County or other location identified in Palm Beach County and acceptable to the TPA for such purpose.

SECTION 10. PREPARATION OF DOCUMENTS, CERTIFICATIONS AND REPORTS. Should the TPA be required by FDOT or an agency of the federal government, including but not limited to the U.S. DOT, or any agency thereof, to provide any certifications, documents or reports related in any manner to this Agreement, the CONTRACTOR will cooperate and assist the TPA with the preparation of such.

SECTION 11. NO AGENCY RELATIONSHIP. Nothing contained in this Agreement or in any contract of the CONTRACTOR's shall create an agency relationship between the TPA and the CONTRACTOR or Palm Beach County and the CONTRACTOR.

SECTION 12. 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 a JPA or MPO Agreement between the TPA and the FDOT as it may be amended, replaced or revised from time to time and any other agreement that the TPA may enter into with FDOT concerning the Work. The CONTRACTOR 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 MPO Agreement or JPA with FDOT or cause FDOT to refuse to approve a requisition or invoice for payment or reimbursement

submitted by the TPA. The CONTRACTOR 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, CONTRACTOR may terminate this Agreement by providing written notice to the TPA. In the event of termination, the CONTRACTOR will be paid by the TPA for services satisfactorily rendered through the effective date of termination; provided, that, the CONTRACTOR is not in breach, 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 CONTRACTOR is contingent upon the CONTRACTOR's satisfactory performance of the Work, the TPA's receipt of funds from the FDOT and allocation of said funds for the purposes of this Agreement.

B. If any provision of this Agreement requires the CONTRACTOR to violate any federal, state or local law or regulation, CONTRACTOR 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 13. TERMINATION. This Agreement may be terminated by the CONTRACTOR for cause upon sixty (60) days written notice to the TPA's representative, at its address set forth in this Agreement or other address designated in writing by the TPO in a notice to the CONTRACTOR. It may also be terminated, in whole or in part, by the TPA, with cause, upon three (3) days written notice to the CONTRACTOR, and without cause and for the convenience of the TPA upon five (5) days written notice to the CONTRACTOR at its address set forth in this Agreement or other address designated in writing by the CONTRACTOR in a notice to the TPA.

The CONTRACTOR shall not be entitled to any anticipated lost profits on uncompleted work or other damages as a result of the TPA's termination of this Agreement for convenience. The CONTRACTOR shall be paid for services rendered to the TPA's satisfaction through the date of termination except, if the CONTRACTOR is in default the TPA shall have a right to offset against the amount that would otherwise be payable to the CONTRACTOR to compensate the TPA for any actual damages suffered because of the CONTRACTOR default(s). The CONTRACTOR expressly acknowledges and agrees that five (5) days notice is adequate consideration for the TPA's right to terminate for convenience. After receipt of a Termination Notice from the TPA, except as otherwise directed by the TPA, the CONTRACTOR 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 CONTRACTOR 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 representative.

SECTION 14. INDEMNIFICATION. CONTRACTOR shall protect, defend, reimburse, indemnify and hold the TPA and Palm Beach County, and their respective agents, employees and elected officers harmless from and against all 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 their performance of the terms of this Agreement or due to the acts or omissions of CONTRACTOR.

SECTION 15. INSURANCE.

A. The CONTRACTOR shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. The CONTRACTOR shall agree to provide the TPA with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as TPA's review or acceptance of insurance maintained by the CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the contract.

B. Commercial General Liability. The CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by TPA. The CONTRACTOR shall provide this coverage on a primary basis.

C. Business Automobile Liability. CONTRACTOR shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Accident for all owned, non-owned and hired automobiles. In the event CONTRACTOR doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONTRACTOR to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. The CONTRACTOR shall provide this coverage on a primary basis.

D. Worker's Compensation Insurance & Employers Liability. CONTRACTOR shall maintain Worker's Compensation & Employers Liability in accordance with Ch. 440, Florida Statutes. The CONTRACTOR shall provide this coverage on a primary basis.

E. Professional Liability. The CONTRACTOR shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Each Claim. When a self-insured retention (SIR) or deductible exceeds \$10,000, the TPA reserves the right, but not the obligation, to review and request a copy of CONTRACTOR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CONTRACTOR shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event

triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONTRACTOR shall purchase a SERP with a minimum reporting period not less than 3 years. The CONTRACTOR shall provide this coverage on a primary basis.

F. Additional Insured. The CONTRACTOR shall endorse the TPA and Palm Beach County as Additional Insureds with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County, Florida and the Palm Beach Transportation Planning Agency, and their respective Officers, Employees and Agents." The CONTRACTOR shall provide the Additional Insured endorsements coverage on a primary basis.

G. Waiver of Subrogation. The CONTRACTOR hereby waives any and all rights of Subrogation against the TPA and Palm Beach County, and their respective Officers, Employees and Agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

H. Certificate(s) of Insurance. Prior to execution of this Contract, the CONTRACTOR shall deliver to the TPA's representative, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be delivered to:

Palm Beach Transportation Planning Agency
c/o: Executive Director
2300 N. Jog Road, 4th Floor
West Palm Beach, Florida 33411

I. Umbrella or Excess Liability. If necessary, the CONTRACTOR may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The TPA and Palm Beach County, Florida, shall be specifically endorsed as "Additional Insureds" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

J. Right to Review. The TPA and Palm Beach County, on behalf of the TPA, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. The TPA reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

SECTION 16. AUTHORITY TO PRACTICE, COMPLIANCE WITH LAWS, LICENSING AND PERSONNEL. The CONTRACTOR warrants that all professional services shall be performed by skilled and competent personnel to the degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities.

A. The CONTRACTOR 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 of the services required hereunder shall be performed as identified in Exhibit A to this Agreement by CONTRACTOR, 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. The CONTRACTOR further represents and warrants that it has and will continue to maintain all licenses, certifications and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner and in accordance with law. Proof of such licenses, certifications and approvals shall be provided to the TPA's representative upon request. The CONTRACTOR warrants that all services shall be performed by highly skilled and competent personnel.

C. Any changes or substitutions to the CONTRACTOR's key personnel identified in Exhibit A to this Agreement must be made known to the TPA's representative and written approval must be granted by the TPA's representative before any such change or substitution can become effective.

D. All of the CONTRACTOR's personnel and all of its subcontractors, while on Palm Beach County property, shall comply with all Palm Beach County requirements governing conduct, safety and security.

E. The CONTRACTOR shall comply with all laws, ordinances and regulations applicable to the Service, including those applicable to conflicts of interest and collusion. CONTRACTOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the Work and its performance thereof.

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, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall comply with the provisions of Palm Beach County Ordinance No. 2003-030, the Criminal History Records Check Ordinance (Ordinance), if the CONTRACTOR'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. The CONTRACTOR 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 TPA agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, CONTRACTOR 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 FDOT that the U.S. Department of Homeland Security's E-Verify System (System) will be used to verify the employment eligibility of the CONTRACTOR's employees, and the employees of the CONTRACTOR's subcontractors, which are working on this Agreement. Accordingly, the CONTRACTOR agrees that it will utilize the System, in accordance with 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 CONTRACTOR 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 CONTRACTOR acknowledges that the TPA has received and will seek funds from FDOT, and that such funds may be used to pay the CONTRACTOR for the services it provides under this Agreement. The CONTRACTOR further acknowledges that FDOT has advised recipients of FDOT funds that it will consider a contractor's employment of unauthorized aliens to be a violation of the Immigration and Nationality Act. The CONTRACTOR 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 FDOT.

SECTION 21. TITLE VI – NONDISCRIMINATION POLICY STATEMENT. During the performance of this Agreement, the CONTRACTOR agrees for itself, its assignees and successors in interest as follows:

A. Compliance with Regulations: The CONTRACTOR shall comply with the nondiscrimination regulations applicable to federally assisted programs of the U.S. DOT 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 CONTRACTOR, 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 familial status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by the Regulations established at 49 CFR 21, as they may be amended from time to time, 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 CONTRACTOR, either by competitive bidding

or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or familial status.

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

E. Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, the FDOT may impose such contract sanctions as it or the FHWA, FTA, FAA, and/or the FMCSA may determine to be appropriate, including, but not limited to:

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

F. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraphs A. through E. of this section in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the FDOT, FHWA, FTA, FAA, and/or the FMCSA may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the FDOT to enter into such litigation to protect the interests of the FDOT, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

G. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall report all grievances or complaints pertaining to its actions and obligations under this Section to the TPA.

SECTION 22. CONFLICT OF INTEREST.

A. The CONTRACTOR 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 CONTRACTOR further represents that no person having any such interest shall be employed to assist in the performance of this Agreement.

B. The CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR. The TPA may notify the CONTRACTOR of its opinion as to whether a conflict exists under the circumstances identified by the CONTRACTOR. If, in the opinion of the TPA, the prospective business association, interest or circumstance would constitute a conflict of interest by the CONTRACTOR, then the CONTRACTOR shall immediately act to resolve or remedy the conflict. If the CONTRACTOR shall fail to do so, the TPA may terminate this Agreement for cause.

C. The CONTRACTOR shall not enter into any contract, subcontract, or arrangement in connection with the Work (also referred to herein as "Project," "Scope," "Scope of Services" or "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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects, the CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR without the prior written consent of the TPA.

SECTION 25. CONTINGENT FEES. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, 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 CONTRACTOR 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.

B. If any funds other than federal appropriated funds have been paid to the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall include the two (2) above-stated clauses modified to show the particular contractual relationship, in all subcontracts it enters into related to the Work.

D. The CONTRACTOR 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 FTA and FHWA. Additional terms and conditions are set forth in Exhibit C attached hereto and made applicable to the CONTRACTOR. The

CONTRACTOR 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 CONTRACTOR or TPA shall have any rights in this Agreement or any remedy against either the CONTRACTOR or 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 CONTRACTOR 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.

SECTION 32. JOINT PREPARATION. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

SECTION 33. SEVERABILITY. Should any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement.

SECTION 34. ENTIRETY OF AGREEMENT AND MODIFICATIONS. The TPA and CONTRACTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

SECTION 35. SURVIVABILITY. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 36. NOTICE. Notices, invoices, communications, and payments hereunder shall be deemed made if given in any of the following forms:

A. By registered or certified envelope, postage prepaid, and addressed to the

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 CONTRACTOR from future contracts as non-responsible.

C. CONTRACTOR shall include the statements set forth in paragraphs A. and B. above in each subcontract or sub-CONTRACTOR contract it lets which contract directly relates to this Agreement.

D. The CONTRACTOR is encouraged to seek DBEs for participation in subcontracting opportunities.

E. The TPA has adopted the FDOT's DBE Program, including but not limited to FDOT's Methodology for Determining DBE Goals and FDOT's Annual Goal 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall notify the TPA immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation of such. The CONTRACTOR must obtain the TPA's representative's prior approval to substitute a DBE. The CONTRACTOR shall provide copies of new or amended subcontracts, or documentation of good faith efforts, as required by the TPA. If the CONTRACTOR 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 CONTRACTOR shall provide the TPA with a copy of the CONTRACTOR's contract with any subcontractor and any other related documentation requested by TPA's representative along with documentation evidencing the certification of DBEs to be used as subcontractors in the performance of this Agreement.

K. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, affirmed as true and accurate, and shall be subject to all statutory and legal requirements applicable to the submission of false statements. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR in its performance of the Work, their pro-rata share(s) of the payment received by the CONTRACTOR from previous progress payments for all work completed and materials furnished in the previous period, less any retainage withheld by the CONTRACTOR pursuant to an agreement with a subcontractor for payment, as approved by the TPA and FDOT, and as deemed appropriate by TPA. The CONTRACTOR shall return all retainage payments withheld by the CONTRACTOR within thirty (30) days after each subcontractor's work has been satisfactorily completed. The CONTRACTOR shall not be entitled to any progress payment before certification, unless the CONTRACTOR 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 CONTRACTOR's receipt of any payment(s) received under this Agreement and any final progress payment received thereafter, the CONTRACTOR shall pay all subcontractors and suppliers having an interest in the Agreement or performing work or providing materials or supplies used by the CONTRACTOR in its performance of the Work, their pro-rata share(s) of the payment(s), unless the CONTRACTOR 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 CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head 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 higher than those charged the CONTRACTOR'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 CONTRACTORS. 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. Palm Beach Board of County Commissioners (BOCC) currently serves as the host for the TPA. The BOCC is exempt from payment of the Florida State Sales and Use Taxes. The TPA will utilize the BOCC exemption certificate until

such time as the TPA is an independent agency. The TPA may sign or have cause to have signed an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the TPA, nor is the CONTRACTOR authorized to use the Palm Beach County's Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect to this Agreement.

SECTION 41. SUCCESSOR AND ASSIGNS. The CONTRACTOR 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 CONTRACTOR shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

SECTION 42. EXCUSABLE DELAYS. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's request, the TPA shall consider the facts and extent of any failure to perform the Work and, if the CONTRACTOR's failure to perform was without its fault or negligence, a 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 CONTRACTOR 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 CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

SECTION 44. DRUG-FREE WORKPLACE. Contractor shall maintain a drug-free workplace.

SECTION 45. GRANT OF LICENSE, SOFTWARE, WARRANTIES.

A. **License and Scope.** TPA agrees to license the software detailed in Exhibit A ("Software") and receive the services detailed in the Statement of Work detailed in Exhibit A ("Services"). CONTRACTOR agrees to provide Software and Services (the "Solution"), subject to the terms and conditions stated in this Agreement including all Exhibits. Payment for such services shall be per Exhibit B and shall not exceed the total amount included in this agreement without the prior written consent of TPA. The TPA, without prior

and mutual written agreement, will incur no other service costs. The service costs in Exhibit B are inclusive of all services described in the Statement of Work. TPA agrees to provide the hardware configuration based on CONTRACTOR's recommendation per Exhibit B.

B. User Documentation. CONTRACTOR shall deliver to TPA five (5) complete copies of the user documentation describing the functionality and operation of the Software in TPA's environment and technical documentation describing the technical support procedures to assist with the on-going support of the Software ("Documentation"), including an electronic version with the ability to modify to the needs of TPA. As part of the license granted herein, CONTRACTOR agrees that Documentation provided with the Software will be updated to reflect any Customizations contracted by TPA with CONTRACTOR. TPA shall have the right to make as many additional copies of the Documentation for its own use as it may determine Incorporation by Reference. The CONTRACTOR shall supply Software and Services adequate to accomplish the requirements as set forth in the Request for Proposal and the CONTRACTOR's response to the Request for Proposal provided herein as Exhibit A and Exhibit B, respectively and CONTRACTOR's Documentation. The Parties agree that where there is a conflict between terms of this Agreement and information presented in the Contract Documents, this Agreement shall take precedence.

C. Standard Forms and Contracts. Any forms and contracts the CONTRACTOR(s) proposes to include as part of any agreement resulting from the RFP must have been submitted as part of CONTRACTOR's proposal. Any forms and contracts not submitted as part of the proposal and subsequently presented for inclusion may be rejected. TPA reserves the right to accept or reject in whole or in part any form contract submitted by a CONTRACTOR and/or to require that amendments be made thereto, or that an agreement drafted by the TPA be utilized. This requirement includes, but is not limited to, the following types of forms: subcontractor, franchise, warranty agreements, maintenance contracts, third party licenses and support agreements.

D. Grant of License. CONTRACTOR hereby grants the following nonexclusive, renewable licenses to use the Software described in Exhibit B solely for internal business purposes by the TPA and/or its designated service provider.

- 1) xxxx (##) Full Suite licenses
- 2) xxxx (##) Full Human Resources Licenses
- 3) xxxx (##) Limited licenses
- 4) xxxx (##) Report viewing and Dashboard only licenses

E. Use of Licenses by Personnel Who Are Not Employees. TPA's consultants, contractors, external customers, and business partners may access and use the Software under the TPA's direction.

F. Replication of Software. TPA shall not copy Software for any purposes other than for back up, disaster recovery and/or testing. TPA has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using CONTRACTOR's recommended database and development tools without voiding the maintenance and support terms or warranties herein.

G. Disaster Recovery & Disaster Recovery Testing. There will be no additional software license cost to process at another site in the event of a disaster that shuts down TPA's primary location or for testing at the disaster recovery site.

H. Warranty.

1) CONTRACTOR represents and warrants that it has the right to grant the licenses set forth under this Agreement. CONTRACTOR further represents and warrants that it has good and marketable title to the Software sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. CONTRACTOR further represents and warrants that neither the Software in the form delivered by CONTRACTOR to TPA, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by TPA, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

2) In the event that any third party makes a claim or files a lawsuit challenging TPA's right to use the Software, CONTRACTOR shall defend and indemnify TPA and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that CONTRACTOR shall have the sole and exclusive right to select and retain counsel for TPA in connection with the defense thereof, and shall make all decisions relating to the conduct of the TPA's defense and any settlement made on behalf of TPA. In resolving any such infringement claim, CONTRACTOR shall, in its reasonable discretion, either procure a license to enable TPA to continue to use the Software or develop or obtain a non-infringing substitute acceptable to TPA at CONTRACTOR's cost.

3) CONTRACTOR represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, CONTRACTOR marketing literature, and any other communications attached to or referenced in this Agreement.

4) CONTRACTOR represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of TPA as set forth in the Contract Documents.

5) TPA has: (a) presented detailed technical specifications of the particular purpose for which the Software is intended, (b) provided detailed descriptions and criteria of how the Software can be defined to accomplish particular purpose, and (c) defined the exact procedures and techniques to be employed in testing whether the Software has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, TPA's particular purpose, CONTRACTOR, at the time this Agreement is in force, has (1) reason and opportunity to know the particular purpose for which the Software is required, (2) that TPA is relying on CONTRACTOR's experience and knowledge of the Software to identify those components which are most suitable and appropriate, and (3) that TPA is relying on CONTRACTOR's experience and knowledge to identify the appropriate Services that will assist in making the Software operational. Therefore, CONTRACTOR warrants that the Software including all products included in this Agreement are fit for the purposes for which they are intended as described in the Contract Documents.

6) CONTRACTOR represents and warrants that all Software products provided under this Agreement are compatible with and certified for use and operation in TPA's operating environment. Furthermore, CONTRACTOR acknowledges that it has reviewed the hardware system ordered by TPA and represents and warrants that such hardware system as defined in Exhibit B is sufficient for TPA's current and reasonably projected use, including account and transaction volumes.

I. Continuity of Warranty. TPA may continue the Warranty protection described above by purchasing and paying for on-going Maintenance and Support Services described below. By doing so, all Warranty, and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as payments for Annual Maintenance and Support Fees are kept current.

J. Disclaimers and Limitations of Remedies. Except as specifically stated in the Warranty section of this Agreement, the Software is Licensed "as is" without warranty of any kind, other than expressed or implied herein. In no event shall CONTRACTOR be liable for any indirect, special or consequential damages unless as otherwise stated herein, including, but not limited to, loss of anticipated profits, revenue or savings, arising from the use of or inability to use the Software or breach of any expressed or implied

warranty, even if CONTRACTOR or its agent has been advised of the possibility of such damages.

K. Intellectual Property. All information, data, programs, publications and media created specifically for and paid for by the TPA or as a result of the Services identified in this Agreement is the property of the TPA unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

L. Patents, Copyrights, and Proprietary Rights Indemnification. The CONTRACTOR, at its own expense, shall completely and entirely defend the TPA from any claim or suit brought against the TPA arising from claims of violation of United States patents or copyrights resulting from the CONTRACTOR or the TPA's use of any equipment, technology, documentation, and/or data developed in connection with the Services and Software (together the Solution) described in this Agreement. The TPA will provide the CONTRACTOR with a written notice of any such claim or suit. The TPA will also assist the CONTRACTOR, in all reasonable ways, in the preparation of information helpful to the CONTRACTOR in defending the TPA against this suit.

In the event that the TPA is required to pay monies in defending such claims, resulting from the CONTRACTOR being uncooperative or unsuccessful in representing the TPA's interest, or in the event that the TPA is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, CONTRACTOR agrees to fully reimburse the TPA for all monies expended in connection with these matters. The TPA retains the right to offset against any amounts owed CONTRACTOR any such monies expended by the TPA in defending itself against such claims.

Should a court order be issued against the TPA restricting the TPA's use of any portion of the Software related to the claim and should the CONTRACTOR determine not to further appeal the claim issue, at the TPA's sole option the CONTRACTOR shall provide, at the CONTRACTOR's sole expense, the following:

- 1) Purchase for the TPA the rights to continue using the contested Software product(s) or portions thereof which may include purchase of a third party software product, or
- 2) Provide substitute software products to the TPA which are, in the TPA's sole opinion, of equal or greater quality, or
- 3) Refund all monies paid to the CONTRACTOR for the Solution subject to the court action. The CONTRACTOR shall also pay to the TPA all reasonable losses related to the Solution and for all reasonable expenses related to the installation, implementation and conversion to the new Solution.

M. Insurance. Evidence of insurance coverage, required herein, is to be provided to us in ACORD Certificate Form 25 or 25-S or an equivalent form.

General Liability limits may be attained by individual policies or by a combination of underlying policies with umbrella and/or excess liability policies.

Notify Your Insurance Agent

CONTRACTOR may prevent unnecessary follow up resulting from incomplete insurance certificates, by sending or faxing a copy of these insurance requirements to CONTRACTOR's agent when requesting an insurance certificate.

N. Unlimited Liability for Software CONTRACTOR Infringement. The CONTRACTOR will reimburse TPA for all costs related to infringement (not "finally awarded"). There shall be no limit of liability on behalf of the CONTRACTOR if the software is determined to be infringing.

O. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Except as otherwise required by law, each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement. This obligation of confidentiality shall not apply to (a) information that at the time of the disclosure is in the public domain; (b) information that, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party; (c) information that a party can establish by reasonable proof was in that party's possession at the time of disclosure; (d) information that a party receives from a third party who has a right to disclose it to that party; or (e) information that is subject to FOIA or Florida's public records law.

P. Title and Confidentiality. Title and full rights to the Software licensed under this agreement, including, without limitation, all intellectual property rights therein and thereto, and any copies TPA make, remain with CONTRACTOR. It is agreed the Software is the proprietary, confidential, trade secret property of CONTRACTOR, whether or not any portions thereof are or may be copyrighted, and TPA shall take all reasonable steps necessary to protect the confidential nature of the Software, as TPA would take to protect its own confidential information. TPA further agrees that TPA shall not make any disclosure of any or all such Software (including methods or concepts utilized therein) to anyone, except to employees, agents, or subcontractors working for TPA to whom such disclosure is necessary to the use for which rights are granted hereunder. TPA shall appropriately notify all employees, agents, and subcontractors to whom any such disclosure is made that such disclosure is made in confidence and

shall be kept in confidence by them. The obligations imposed by this section upon TPA, its employees, agents, and subcontractors, shall survive and continue after any termination of rights under this Agreement. It shall not be a breach of this agreement if TPA is required to disclose or make the Software available to a third party or to a court if the Software is required to be disclosed pursuant to Florida "open records" law, or is subpoenaed or otherwise ordered by an administrative agency or court of competent jurisdiction to be produced.

Q. Identification of Parties to the Agreement Clause. Both the CONTRACTOR and TPA shall be clearly identified by name. Neither of the identified parties to the Agreement shall assign or encumber any of its rights, or delegate or subcontract any of its duties defined in the Agreement, in whole or in part, to other third parties unless the other party to the Agreement gives prior written consent. Subject to the foregoing covenant against assignment and delegation, the rights created by the Agreement shall pass to the benefit of the identified party and the duties and obligations resulting from the Agreement shall bind the identified party and their respective successors and assignees.

R. Risk During Software Installation. Delivery of the Software shall be made in accordance with the Project Schedule referenced as part of this Agreement. Minor variances from this Project Schedule may be permitted subject to a mutual agreement by both parties and confirmed by prior written notice. The Software shall be installed and placed into good working order by representatives of the CONTRACTOR. During the time period where the Software is in transit and until the Software is fully installed in good working order, the CONTRACTOR and its insurer shall be responsible for the Software and relieve the TPA of responsibility for all risk or loss or damage to the Software. In addition, CONTRACTOR shall hold the TPA and its officers, employees and agents harmless from any risk of loss or damage arising out of occurrences during the installation of the Software.

S. Subcontractors. CONTRACTORS may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the CONTRACTOR must obtain written prior approval from the TPA for activities or duties to take place at the TPA site. In using subcontractors, the CONTRACTOR agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the CONTRACTOR.

T. Control of Sub-Contractor, Project Team and Project Manager Designation. The CONTRACTOR understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively manage this process, the CONTRACTOR shall designate a single representative to act as an ex-officio member of the TPA's project management team ("Project Manager") and who shall have the authority to

act on behalf of the CONTRACTOR on all matters pertaining to this Agreement.

TPA shall have the right to approve all subcontractors, Project Manager, and staff assigned to TPA by CONTRACTOR ("Designated Staff"). In the event that a Designated Staff of the CONTRACTOR is, in the opinion of the TPA, uncooperative, inept, incompetent, or otherwise unacceptable, the CONTRACTOR agrees to remove such person from the project. In the event of such a removal, the CONTRACTOR shall, within xxxxx (##) days, fill this representative vacancy as described above. Regardless of whom the CONTRACTOR has designated to fill this representative vacancy, the CONTRACTOR organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

U. Effect of Regulation. Should any local, state, or national regulatory authority having jurisdiction over the TPA enter a valid and enforceable order upon the TPA which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the TPA of a material part of its Agreement with the CONTRACTOR. In the event this order results in depriving the TPA of material parts or raising their costs beyond that defined in this Agreement, the TPA shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon xxxxx (##) days written prior notice to the CONTRACTOR. Should the Agreement be terminated under such circumstances, the TPA shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The TPA shall not be charged for such compliance beyond the cost of the annual maintenance and support fees. The TPA shall also not be charged for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the annual maintenance and support fees.

V. Advertisement. CONTRACTOR shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the TPA unless CONTRACTOR receives specific written authorization in advance from the TPA's Executive Director. CONTRACTOR will limit and direct any of its advertising on the TPA's premises and shall arrange for such advertising through the Executive Director. CONTRACTOR shall not install any signs or other displays within or outside of the TPA's premises unless in each instance the prior written approval of the TPA's Executive Director has been obtained. However, nothing in this clause shall preclude CONTRACTOR from listing the TPA on its routine TPA list for matters of reference.

W. Password Security. The CONTRACTOR warrants that no 'back door' password or other method of remote access into the Software code exists.

X. Project Schedule and Acceptance. CONTRACTOR will develop a detailed project schedule that details both CONTRACTOR and TPA's responsibilities, timeline for project activities, phases, milestones, and deliverables ("Project Schedule") in connection with CONTRACTOR's performance of the Services. The Project Schedule should be in sufficient detail to specify the deliverables, conversion, training, testing, acceptance, configuration, modification, integration, and live operation activities. Both CONTRACTOR and TPA agree that a mutually agreeable Project Schedule will be submitted and approved by TPA within xxxxx (##) days of the date the Agreement is signed by both parties ("Effective Date"). In the event CONTRACTOR is unable to provide the Project Schedule within xxxxx (##) days, TPA will have at its option, the ability to terminate the Agreement and obtain all fees paid to CONTRACTOR. The Project Schedule will also include the criteria by which the software will be tested and accepted by TPA.

Y. Programming Services. TPA may during the implementation period or thereafter require modifications, interfaces, conversion, report writing, etc., services from CONTRACTOR ("Customizations"). CONTRACTOR agrees to provide a written Change Order describing the work to be performed and estimating the costs for TPA approval before any work is initiated by CONTRACTOR. CONTRACTOR will not exceed the costs set forth in the mutually agreed to Change Orders without justification, in writing, that is acceptable to the TPA. No costs in excess of the estimates will be paid by TPA unless approved in writing in advance of fee incurrence. All Customizations shall be subject to Acceptance Testing before payment is

released by the TPA. Acceptance of the Customizations resulting from each Change Order shall be per the Acceptance Testing clause herein.

Z. Acceptance Testing. For purposes of acceptance of the Solution (or portions thereof), the parties intend to use the following staged acceptance procedure. All timeframes specified in the following procedures may be overridden by the Project Schedule.

1) Written Deliverable: CONTRACTOR may submit interim drafts (stamped, noted or otherwise clearly marked "Draft") of a written deliverable to TPA for review. TPA agrees to review and provide comments to CONTRACTOR on each interim draft within xxxxx (#) business days after receiving it from CONTRACTOR. TPA will have the opportunity to review the written deliverable for an acceptance period of xxxxx (#) business days after delivery of the final version (stamped, noted or otherwise clearly marked "Final Draft") of the written deliverable (the "Acceptance Period"). TPA agrees to notify CONTRACTOR in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form delivered by CONTRACTOR or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If CONTRACTOR does not receive any such deficiency notice from TPA by the end of the Acceptance Period, the written deliverable will be deemed to be accepted and an approved document marked "Approved" and dated will be provided to TPA. If TPA delivers to CONTRACTOR a timely notice of deficiencies and the items specified in the notice are deficiencies, CONTRACTOR will promptly correct the described deficiencies and return to TPA for Acceptance. TPA will not unreasonably withhold, delay or condition its approval of a final written deliverable.

CONTRACTOR is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the TPA and date returned.

2) Software Deliverable: Acceptance testing is an iterative process designed to determine whether each component of the Software combined with related Services delivered by CONTRACTOR ("Software Deliverable") performs the functions described in the Contract Documents and to discover and remove material deviations where the Software Deliverable does not substantially perform the

functions described in the Contract Documents (“Defects”) through repeated testing cycles. In the event of conflicts between Contract Documents and Application Software Documentation the Contract Documents will prevail.

CONTRACTOR will work with the TPA and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested Software Deliverable and to test each Software Deliverable (the “Acceptance Tests” or “Acceptance Testing”).

a) The “Acceptance Test Period” for each Software Deliverable will be xxxxx (##) business days unless an alternate time is mutually agreed upon between CONTRACTOR and TPA per the Project Schedule. The Acceptance Test Period for each Software Deliverable will start within xxxxx (#) business days, unless an alternate start date is mutually agreed upon by CONTRACTOR and TPA per the Project Schedule, after the Software Deliverable is installed at TPA’s designated site and CONTRACTOR has successfully completed CONTRACTOR’s installation test and notified TPA that the Software deliverable is “Ready for Acceptance Testing.” CONTRACTOR will not be obligated to deliver a Software Deliverable to TPA until TPA demonstrates the readiness of the target technical platform and environment.

b) If TPA determines during the Acceptance Test Period that the Software Deliverable contains a Defect, TPA will promptly send CONTRACTOR a written notice reporting the alleged Defect describing it to CONTRACTOR in sufficient detail reasonably necessary for CONTRACTOR to recreate it. CONTRACTOR will modify the Software Deliverable to remove the reported Defect and will provide the modifications to TPA for re-testing. TPA will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from CONTRACTOR. In such a case, CONTRACTOR and TPA will mutually agree upon an updated Acceptance Test Period.

c) By the end of the Acceptance Testing Period TPA will provide CONTRACTOR with a final written list reporting any outstanding Defects (the “Punch List”). TPA will then have xxxxx (##) business days after the receipt of the modifications to re-test the modified Software Deliverable to confirm that the

Defects that were reported on the Punch List have been removed. If any Defects that were reported on the Punch List have not been removed, TPA will provide CONTRACTOR with written notification by the end of the retesting period reporting any such Defects. In such event, the procedures set forth in this section will be repeated for the remaining Defects on the Punch List.

d) CONTRACTOR and TPA each agrees to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.

3) "User Acceptance Testing" shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.

4) "Conditional Acceptance" will occur upon the earlier of correction of Defects reported as part of User Acceptance Testing of the Phase, or Go-Live of the Phase. There will be a Conditional Acceptance for each Phase; Conditional Acceptance after the final Phase constitutes Conditional Acceptance of the entire Solution. Unless the Project Schedule determines otherwise, the Acceptance Test Period for User Acceptance Testing will be xxxxx (##) calendar days, CONTRACTOR and TPA will work diligently to put the Phase into Go Live operations.

5) "Final Acceptance" involves use of the Solution in totality in production operations for a period of xxxxx (##) calendar days, provision of all Services by CONTRACTOR, and completion of the Phases and/or the Software previously tested and meeting Conditional Acceptance. If after xxxxx (##) calendar days the Solution performs without Defects, the TPA and the CONTRACTOR will both issue and execute a "Final Acceptance" of the Solution. The xxxxx (##) day time frame for Final Acceptance will stop if Defects are found during production use and prevent further production use of the Software. The Final Acceptance process will resume on the date the Defect is confirmed as fixed and will continue for the remainder of the Xxxxx (##) day time frame. There will be a Final Acceptance for each Phase; Final Acceptance after the final Phase constitutes Final Acceptance of the entire Solution.

AA. Professional Services Warranty.

1) CONTRACTOR agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. CONTRACTOR agrees that, at all times, the employees of CONTRACTOR furnishing or performing any services

shall do so in a proper, workmanlike, and dignified manner.

2) CONTRACTOR agrees that all persons working for or on behalf of CONTRACTOR whose duties bring them upon the TPA's premises shall obey the rules and regulations that are established by the TPA and shall comply with the reasonable directions of the TPA's officers. The TPA may, at any time, require the removal and replacement of any of CONTRACTOR's employees for good cause.

3) CONTRACTOR shall be responsible for the acts of its employees and agents while on the TPA's premises. Accordingly, CONTRACTOR agrees to take all necessary measures to prevent injury and loss to persons or property located on the TPA's premises. CONTRACTOR shall be responsible for all damages to persons or property caused by CONTRACTOR or any of its agents or employees. CONTRACTOR shall promptly repair, to the specifications of the TPA, any damage that it, or its employees or agents, may cause to the TPA's premises or equipment; on CONTRACTOR's failure to do so, the TPA may repair such damage and CONTRACTOR shall reimburse the TPA promptly for the cost of repair.

4) CONTRACTOR agrees that, in the event of an accident of any kind, CONTRACTOR will immediately notify the TPA's contact person and thereafter, if requested, furnish a full written report of such accident.

5) CONTRACTOR shall perform the services contemplated in the Agreement without interfering in any way with the activities of the TPA's staff or visitors.

6) CONTRACTOR and its employees or agents shall have the right to use only those facilities of the TPA that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the TPA. The TPA shall also extend parking privileges to properly identified members of CONTRACTOR's full-time staff on the same basis as they are extended to the TPA's staff.

7) The TPA shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of CONTRACTOR or its employees or subcontractors.

BB. Ineffective Training. CONTRACTOR will submit to TPA an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, CONTRACTOR will provide to TPA details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. TPA will conduct a rating of the course after its completion and communicate the results of this rating to CONTRACTOR for future class improvements. In the event that TPA asserts in good faith that any CONTRACTOR training consultant lacks the skill or capacity to adequately train TPA's staff, CONTRACTOR shall replace such training consultant as soon as reasonably possible. If TPA notifies CONTRACTOR within xxxxx (#) business days of the completion of said training, that in TPA's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then CONTRACTOR shall provide a credit in training days to TPA for all such training sessions.

CC. Non-Performance Escalation Procedures. In the event that the TPA determines that CONTRACTOR is not performing in a manner consistent with the intent and spirit of this Agreement or in a manner consistent with commonly accepted business practices, then the TPA shall have the right to, in the sequence shown: (a) formally notify CONTRACTOR of non-performance, (b) reserve the right to withhold any and all payments pending, including support and maintenance fees, until the non-performance is corrected, (c) request a joint meeting of CONTRACTOR and TPA decision makers to attempt to resolve the non-performance, (d) require a CONTRACTOR employee to be on-site at TPA's location until the non-performance is resolved, (e) request arbitration in West Palm Beach, Florida per terms of the American Arbitration Association or at TPA's sole option, commencing suit in Palm Beach County, Florida, the venue of which is agreed to by CONTRACTOR, (f) invoke the Termination clause herein.

DD. Force Majeure Clause. Timely performance is essential to the successful initial implementation and ongoing operation of the network described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure.

EE. Force Majeure Requisites. Force majeure shall not be allowed unless:

- 1) Within xxxxx (#) calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.
- 2) Within xxxxx (#) calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

FF. 120 Day Maximum. Under no circumstances shall delays caused by a force majeure extend beyond xxxxx hundred-twenty (120) days from the

scheduled delivery or completion date of a task, unless by prior [to the end of the xxxxx hundred- twenty (120) day period] written approval is received from the other party. Failure to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

GG. Right of Cancellation. Either party shall have the right to cancel the Agreement if force majeure suspends performance of scheduled tasks by xxxxx or more parties for a period of xxxxx hundred-twenty (120) or more days from the scheduled date of the task. If a cancellation due to a force majeure occurs before title passes to the TPA, the CONTRACTOR may keep any parts of the system as it can salvage, but must remove same at its own expense. If cancellation occurs due to a force majeure after title passes to the TPA, the system shall remain with the TPA and the CONTRACTOR shall be entitled to any such payments as have accrued according to the payment schedule.

HH. Liquidated Damages. Failure on the part of the CONTRACTOR to complete critical project milestones as established in the Project Schedule may result in liquidated damages being imposed on the CONTRACTOR by the TPA for breach of contract and for non-compliance. The milestones will be defined in the Project Schedule and extent of damages will be <\$\$\$> per day for each day the project Go Live date as defined in the Project Schedule is extended.

II. Pricing. All prices for CONTRACTOR's Software and Services hereunder are firm for the term of the Agreement. The TPA shall pay CONTRACTOR for satisfactory performance of the Software and Services specified in this Agreement, the sums in accordance with CONTRACTOR's response to TPA's RFP, this Agreement and any related addenda. TPA reserves the right to delay the purchase of Software components ("Modules") and related Services. The Modules subject to this price protection are included in Exhibit A.

JJ. Change Orders. The Project Managers appointed pursuant to this Agreement will meet periodically to review the Project Schedule. Changes to the scope of the project including additional Software and Services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a written document, inclusive of any applicable pricing changes ("Change Order"). Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

KK. CONTRACTOR shall provide to TPA a written quotation for any changes in this Agreement, including Software, Services, Customizations, etc. Each Change Order shall be reviewed and **Software.**

approved by TPA, and shall be subject to the requirements in the section.

LL. Payment Terms. It is expected that certain payments will be made to CONTRACTOR by TPA upon delivery of the Software with additional payments made for Software and Services based on specific project milestones as defined in the Project Schedule.

CONTRACTOR shall invoice **TPA** for the Total Amount on Exhibits A and B according to the following payment schedules:

- 1) ##% Due upon Contract Execution
- 2) ##% Due upon initial Software installation
- 3) ##% Due in installments based upon Conditional Acceptance of each Software module
- 4) ##% Due upon Final Acceptance

MM. Services.

- 1) ##% Due in installments based on Conditional Acceptance of Milestones as defined in the Statement of Work
- 2) ##% Due upon Final Acceptance

NN. Customizations.

- 1) ##% Due as incurred upon completion of design
- 2) ##% Due upon Conditional Acceptance of Modification
- 3) ##% Due upon Final Acceptance

OO. Maintenance and Support Services. First year maintenance and support services fee due upon Final Acceptance.

CONTRACTOR shall submit to the TPA an invoice in a form agreeable to the TPA. The invoice shall be accompanied by such supporting documentation as required by the TPA.

PP. Right to Withhold Payment. If the CONTRACTOR breaches any provision of this Agreement, the TPA shall have a right to withhold all payments due to the CONTRACTOR until such breach has been fully cured.

QQ. Travel Expense Reimbursement. All travel expense costs must be included in the CONTRACTOR's fixed price cost. TPA will not make a separate payment for reimbursable expenses. TPA shall not be liable for additional travel costs incurred due for any reason outside of CONTRACTOR's control.

RR. Funding Out. This Agreement shall terminate at such time, if any, that the TPA Board fails to appropriate sufficient sums in the budget year for which the Agreement applies to pay the amount due.

SS. Maintenance and Support Services. For as long as TPA pays the maintenance and support fees delineated in Exhibit A, CONTRACTOR will provide TPA with maintenance and support services ("Extended Services") with respect to the Software. Such Extended Services shall consist of the following:

- 1) CONTRACTOR shall provide maintenance for the Software necessary to insure its operation in material conformance with all Documentation, Contract Documents and all representations and warranties set forth herein.
- 2) CONTRACTOR shall provide TPA with any revisions, updates and enhancements of the Software, together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.

- 3) CONTRACTOR agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (2) years from initial contract signing.
- 4) CONTRACTOR agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of TPA, which will not be unreasonably withheld. CONTRACTOR will not utilize subcontractors for any Extended Services provided herein without the express written authorization of TPA.

TT. Annual Maintenance and Support Fees. Annual maintenance and support fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Southeast region or xxxxx (#) %, whichever is less, for as long as annual support fees are paid and the license agreement between the TPA and the CONTRACTOR is in effect.

CONTRACTOR agrees to send an itemized invoice to the TPA at least 90 days before maintenance is up for renewal.

UU. Resolution and Response Time Warranty. CONTRACTOR warrants that all Resolution and Response Times delineated below shall be adhered to as follows, as determined by the CONTRACTOR's Project Manager:

Priority 1 support issues are defined as: Mission Critical – Software is down/undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given.

- Response to first call time limit – within one (1) business hours.
- Resolution time limit – CONTRACTOR shall use its best efforts to resolve within one (1) business day.
- If CONTRACTOR and TPA are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, CONTRACTOR support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost. TPA acknowledges that programmers will not be available at that time.
- Penalty for not adhering to time limits - TPA shall receive a xxxxx (#) % credit against the annual maintenance and support fees, per incident.

Priority 2 support issues are defined as: Critical Issue – Software is not down, but operations are negatively impacted.

- Response to first call time limit – within two (2) business hours.
- Resolution time limit – CONTRACTOR shall use its best efforts to resolve within two (2) business days.
- Penalty for not adhering to time limits - TPA shall receive a xxxxx percent (#%) credit against the annual maintenance and support fees, per incident.

Priority 3 support issues are defined as: Non-Critical Issue – resolution period

to be mutually agreed upon.

- Response to first call time limit – within two (2) business hours.
- Resolution time limit – CONTRACTOR shall use its best efforts to resolve within two (2) business days.
- Penalty for not adhering to time limits - TPA shall receive a xxxxx percent (#%) credit against the quarterly Support fees, per incident.

VV. Termination of Annual Maintenance and Support. TPA may cancel maintenance upon xxxxx (##) day notification to the CONTRACTOR.

Maintenance may be reinstated by the TPA at an amount not to exceed the back fees that would have been due if maintenance/support had not been dropped. In the event of reinstatement of Maintenance, the TPA shall not be forced to move to a new license model and no upgrade fees for licenses already purchased shall be charged by CONTRACTOR.

The CONTRACTOR shall give the TPA at least xxxxx (##) months' notice before unilaterally canceling maintenance. In addition, the CONTRACTOR shall continue to support the software/product as long as it is supporting such Software for other customers of CONTRACTOR.

WW. Source Code Escrow. CONTRACTOR shall place Source Code for the Software modules licensed by the TPA in escrow with an independent third-party (with whom a separate Escrow Agreement will be entered into by CONTRACTOR at no additional cost to TPA). The Source Code shall be kept current with the releases and versions of the Software in live use at the TPA. The Source Code shall revert to TPA for TPA's use if CONTRACTOR files for bankruptcy or protection from creditors in a court of law. TPA shall then have full rights to use source code for any purposes other than resale.

CONTRACTOR will provide appropriate source code to the TPA in a timely manner in the event that the CONTRACTOR goes out of business or no longer supports the Software being licensed. The same applies if the CONTRACTOR is merged or acquired and the Software is no longer supported. Once the TPA obtains the source code, it will be a perpetual license, and there will be no additional fees due, even if additional licenses are deployed.

XX. Video and Audio Recording. TPA reserves the right to record video and/or audio of any and all training sessions, whether held at TPA site, CONTRACTOR site, or via teleconference. Use of such recordings shall be strictly for TPA staff training purposes.

YY. Federally Mandated Changes. CONTRACTOR shall supply TPA with all federally mandated changes to CONTRACTOR's Software. CONTRACTOR will make a good faith effort to provide TPA with these changes within xxxxx (##) days of their enactment dates prescribed by the aforementioned bodies. In the event that CONTRACTOR is unable to supply these changes within xxxxx (##) days of the enactment, TPA will be credited a prorated share of the annual maintenance and support fee for every week CONTRACTOR is tardy in delivering the required change.

ZZ. Future Releases/Upgrades. TPA shall be entitled to future releases and upgrades, whether of a “minor” or major” nature, of CONTRACTOR Software for no additional cost beyond the annual maintenance and support fees delineated in Exhibit B.

AAA. Solution Longevity. The CONTRACTOR certifies that the Software will remain available and fully supported by CONTRACTOR for a minimum of five (5) years from the date the Agreement is signed and that any material changes to CONTRACTOR’s company or products will not affect the TPA’s implementation, maintenance or support of the Software as long as TPA pays the annual maintenance and support fees.

BBB. Successor Software Products. In the event CONTRACTOR makes available successor software products with substantially similar functionality as the Software which may be based on a new technical architecture (“Successor Products”) within xxxxx (##) years of contract signing, TPA may transfer the license for the Software to the Successor Products for no additional CONTRACTOR license fees. In such event, TPA shall pay the then-current annual maintenance and support fees for the Successor Products, in addition to any services and/or third party fees associated with the Successor Products.

CCC. Functionality Replacement. The TPA maintains the rights to the Software functionality that is licensed herein, even if that functionality later gets renamed or rebundled by CONTRACTOR.

DDD. Right to Outsource. Software licensed to TPA may be used by a third-party CONTRACTOR hired by TPA to perform outsource services on TPA’s behalf.

IN WITNESS WHEREOF, the Palm Beach Transportation Planning Agency and the CONTRACTOR have hereunto executed this Agreement on the day and year above written.

CONTRACTOR

WITNESS:

By: _____
Signature

Signature

Print Name, Title

Print Name

PALM BEACH MPO doing business as the
PALM BEACH TRANSPORTATION
PLANNING AGENCY

WITNESS:

By: _____
Hal Valeche, Chair

Signature

Print Name

Approved as to Form and
Legal Sufficiency

Approved as to Terms
and Conditions

TPA Legal Counsel

Executive Director, Palm Beach TPA

Contract Exhibits

Exhibit A - RFP No. 2018-01

A Full Copy is available for review upon request.

Exhibit B - Contractor Proposal, Dated _____

Exhibit D - Sample invoice

ERP System Implementation and Services

Date Issued:

A FULL COPY OF RFP NO. 2018-01 IS AVAILABLE FOR REVIEW AND
INSPECTION UPON REQUEST FROM THE TPA

CONTRACT EXHIBIT B - CONTRACT PROPOSAL

**Contractor's Proposal for
RFP 2018-01**

CONTRACT EXHIBIT - C - 1 FEDERAL PROVISIONS- FTA

Federal Contractual Provisions

FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS

The applicable provisions in this Section shall be set forth in any Contract resulting from this RFP. By submitting a Proposal, Proposers acknowledge and agree to comply with the applicable provisions in this Section in the event they are awarded the Contract.

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRDPARTIES.

In connection with the Project, the Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subcontractor, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subcontract, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Contractor, including any subcontractor, lessee, third party contractor, or other participant at any tier of the Project.

2. FEDERAL LAWS, REGULATIONS, AND DIRECTIVES.

The Contractor agrees that Federal laws and regulations control Project award and implementation. The Contractor also agrees that Federal directives, as defined in the Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Contractor understands and agrees that unless the Contractor requests FTA approval in writing, the Contractor may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or the Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Contractor understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Contractor on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal FTA laws, regulations, and directives may become effective after the date on which the Contractor executes this Agreement for the Project, and might apply

to this Agreement. Contractor agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Contractor signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Agreement. To accommodate changing Federal requirements, the Contractor agrees to include in each agreement with each subcontractor, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in this Agreement for the Project, and in the Master Agreement are minimum requirements, unless modified by FTA.

3. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.

Contractor acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Contractor's activities in connection with the Project. By executing Contract for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government or the TPA in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(I), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate

4. CIVIL RIGHTS.

The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

B. Nondiscrimination - Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Contractors," and any other applicable Federal directives that may be issued.

C. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41

C.F.R. Parts 60 et seq.; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

D. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Contractor agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Contractor agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from

U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Contractor agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Contractor's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Contractor of the Contractor's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

E. Nondiscrimination on the Basis of Sex. The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

F. Nondiscrimination on the Basis of Age. The Contractor agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the

Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

G. Access for Individuals with Disabilities. The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29

U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C.

§§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

I. Access to Services for Persons with Limited English Proficiency. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Contractors' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

J. Environmental Justice. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Laws. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

5. FEDERAL STANDARDS.

The Contractor agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with

applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Contractor understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

6. ACCESS TO THIRD PARTY CONTRACT RECORDS.

The Contractor agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49

U.S.C. § 5325(g). The Contractor further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

7. RIGHT OF THE FEDERAL GOVERNMENT TO TERMINATE.

Upon written notice, the Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Contractor has violated the terms of the Grant Agreement or Contract for the Project including the Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Contractor understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Contract for the Project, or the Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Contractor has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to

comply with the terms of the Grant Agreement or Contract for the Project including the Master Agreement, the Federal Government reserves the right to require the

Contractor to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

8. DEBARMENT AND SUSPENSION.

The Contractor agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Contractor agrees to review the "Excluded Parties Listing System" at <http://epls.gov/> and to include a similar term or condition in each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor, lessee, third party contractor, and other participant at a lower tier of the Project, will review the "Excluded Parties Listing System" at <http://epls.gov/>, and will include a similar term or condition in each of its lower tier covered transactions.

9. BUY AMERICA REQUIREMENTS

The Successful Proposer is hereby notified that this project is funded with federal funds from the FTA. Therefore, this project shall comply with the Buy America regulations published at 49 CFR Part 661. The Contractor shall comply with 49 U.S.C. §5323(j) and FTA regulations, "Buy America Requirements," 49 CFR Part 661, and any amendments thereto in performing the Services requested in this RFP. If applicable, the Buy America certification forms shall be completed, signed, notarized and returned to the TPA prior to Contract award.

10. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.

The Contractor agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

A. Notification to FTA. The Contractor agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Contractor seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under Section 56 of the Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Contractor operates its public transportation system or implements the Project.

B. Federal Interest in Recovery. The Federal Government retains the right to a

proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Contractor may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

C. Enforcement. The Contractor agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

D. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.

E. Alternative Dispute Resolution. FTA encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

11. LOBBYING RESTRICTIONS.

The Contractor agrees that:

- (1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Contract;
- (2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and
- (3) It will comply, and will assure the compliance of each subcontractor, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

12. CLEAN AIR.

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

- (1) The Contractor agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The Contractor further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
- (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended,

that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Contractor agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

(3) The Contractor agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

13. CLEAN WATER.

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

14. RIGHTS IN DATA AND COPYRIGHTS.

A. Definition. The term "subject data," as used in Section 18 of the Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Contract for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" do not include financial reports, cost analyses, or other similar information used for Project administration.

B. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Contract for the Project:

(1) Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the prior written consent of the Federal Government and the TPA, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18.b(1) of the Master Agreement, however, do not apply to a Grant Agreement or Contract with an institution of higher learning.

C. Federal Rights in Data and Copyrights. The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in the Subsection 18.c of the Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

- (1) Any subject data developed under the Grant Agreement or Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Contract for the Project, whether or not a copyright has been obtained; and
- (2) Any rights of copyright to which a Contractor, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

D. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Contractor of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the Master Agreement, FTA may make available to any FTA Contractor, subcontractor, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of the Master Agreement and shall be delivered as the Federal

Government may direct. This does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use when the costs thereof are financed with Federal assistance through an FTA capital program.

E. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.

F. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

G. Restrictions on Access to Patent Rights. Nothing in Section 18 of the Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

H. Data Developed Without Federal Funding or Support. In connection with the Project, the Contractor may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of the Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Contractor understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

I. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Contractor understands and agrees that the data and information it submits to the TPA or Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

CONTRACT EXHIBIT C - 2 FEDERAL PROVISIONS- FHWA

FEDERAL HIGHWAY ADMINISTRATION ("FHWA") REQUIRED CONTRACTUAL PROVISIONS

The following terms apply to all contracts in which services involve the expenditure of federal funds:

A. It is understood and agreed that all rights of the TPA relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.

B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.

C. Compliance with Regulations: The Consultant shall comply with the Regulations of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

D. Nondiscrimination: The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

E. Solicitations for Subcontracts, 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 and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the TPA, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or 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 TPA, Federal Highway

Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

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

1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

H. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the TPA, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a 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 TPA to enter into such litigation to protect the interests of the TPA, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

I. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.

J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any sub consultant or contractor.

The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.

L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18,

Section 1020, is hereby incorporated by reference and made a part of this Agreement.

M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the TPA. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.

N. The TPA hereby certifies that neither the consultant nor the consultant's representative has been required by the TPA, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The TPA further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The Consultant hereby certifies that it has not:

- 1 employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
- 2 agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
- 3 paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

CONTRACT EXHIBIT D - SAMPLE INVOICE

Consultant Header

Consultant Address

TPA Contract Manager
TPA Contract Manager Title
Palm Beach TPA
2300 N Jog Road, 4th Floor
West Palm Beach, FL 33411-2749

Invoice Number: _____
Project Ref Number: _____
Invoice Date: _____
Work Order: _____

Dear TPA Contract Manager,

Below is a summary of the activities completed during the period of: _____ to _____.
Date Date

Task/Sub-Task	Due Date	Sub-task Cost	Previous Invoice Amount	Current Invoice Amount	Amount Remaining
1					
1.1.					
1.2.					
1.3.					
2					
2.1.					
2.2.					
2.3.					
3					
3.1.					
3.2.					
3.3.					
3.4.					
3.5.					
3.6.					
TOTAL COST					

The following deliverables are submitted with this invoice:

Consultant Name

Project Manager Signature

Project Manager Name:

Consultant Payment Remittance Address (If Different than primary address)

SECTION 6 - APPENDICES TO BE SUBMITTED WITH PROPOSAL

APPENDIX A - BUSINESS INFORMATION FORM

APPENDIX B - AMENDMENT ACKNOWLEDGEMENT FORM

APPENDIX C - PROPOSER QUALIFICATION FORM

APPENDIX D - PRIOR IMPLEMENTATION REFERRAL FORM

APPENDIX E - DISCLOSURE OF SUBCONTRACTORS, SUBCONTRACTORS AND SUPPLIERS

APPENDIX F - DRUG-FREE WORKPLACE AFFADAVIT

APPENDIX G - PRICE PROPOSAL PAGE

APPENDIX H - ANTICIPATED DBE PARTICIPATION STATEMENT

APPENDIX A - BUSINESS INFORMATION FORM

RFP NO. 2018-01

Full Legal Name of Entity: _____
(Exactly as it is to appear on the Contract/Agreement)

Entity Address: _____

Telephone Number: (____) _____ Fax Number: (____) _____

If Respondent is a subsidiary, state name of parent company.

Caution: All information provided herein must be as to Respondent (subsidiary) and not as to parent company.

Federal I.D. Number: _____

Form of Entity:

☐ Corporation ☐ Limited Liability Company ☐ Partnership, General
☐ Partnership, Limited ☐ Joint Venture ☐ Sole Proprietorship

Is Entity registered to do business in the State of Florida? Yes ☐ No ☐

If yes to the above, as of what date? _____

If not presently registered with the Division of Corporations to do business in the State of Florida as either a Florida or foreign corporation, Respondent acknowledges, by signing below, that if it is the Awardee it will register with the State of Florida prior to the effective date of the contract with TPA.

PROPOSER'S AUTHORIZED SIGNATURE:

SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

COMPANY: _____

APPENDIX B - AMENDMENT ACKNOWLEDGEMENT FORM

RFP NO. 2018-01

Amendment #

Date Received

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROPOSER:

(Company Name)

(Signature)

(Printed Name & Title)

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM MAY DEEM YOUR PROPOSAL
NON-RESPONSIVE

APPENDIX C - PROPOSER QUALIFICATION FORM

RFP NO. 2018-01

A. Full Name of Proposer:

B. Indicate the number of years the Proposer has had successful experience providing ERP System software and services to governmental entities: Years:

C. List all contractors participating in this project (including subcontractors, etc.):

a. Name	Address	Title
---------	---------	-------

1. _____

2. _____

3. _____

4. _____

D. Outline specific areas of responsibility for each contractor listed in Question C.

1. _____

2. _____

3. _____

4. _____

E. Have you ever failed to complete any work awarded to you? Yes ____ No ____
If so, note when, where and why:

- F. Within the last five years, has any officer or partner of your organization ever been an officer or partner of any other organization that failed to complete a contract? Yes _____ No _____ If yes, attach a separate sheet of explanation.
- G. Within the last five years, have you ever had a performance, payment or bid bond called? Yes _____ No _____ If yes, attach a separate sheet of explanation.
- H. Have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against the TPA? Yes _____ No _____ If yes, attach a separate sheet of explanation.
- I. Within the last five years, have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against any other governmental entity in Florida? Yes _____ No _____ If yes, attach a separate sheet of explanation.
- J. Have you ever had a contract terminated (either as a prime contractor or sub-contractor,) for failure to comply, breach, or default? Yes _____ No _____ If yes, attach a separate sheet of explanation.
- K. On a separate sheet, describe the management systems and reporting systems that your organization will utilize to perform the services described in this request for Proposals.

_____	_____
Signature	Title
_____	_____
Name	Date

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM MAY
DEEM YOUR PROPOSAL NON-RESPONSIVE**

APPENDIX D - PRIOR IMPLEMENTATION REFERRAL FORM

RFP NO. 2018-01

Please list a minimum of five (5) government contract references for similar implementations to those requested in this RFP and include a complete listing of all local government clients for the requested products and services

Vendor name:	
Customer name:	
Customer contact:	
Customer phone number:	()
Customer E-mail address	
System which Solution Replaced	

Describe Nature of Project and Services Provided to This Client:

--

Configuration of Solution Implemented (Hardware, Software):

--

FAILURE TO COMPLETE AND RETURN THIS FORM MAY DEEM YOUR PROPOSAL NON-RESPONSIVE

APPENDIX E - PROPOSER'S DISCLOSURE OF SUBCONTRACTORS AND SUPPLIERS

RFP NO. 2018-01

Please list all Subcontractors, Subcontractors, and Suppliers to be used in connection with performance of the Contract. (Use additional pages, if necessary):

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

FAILURE TO COMPLETE AND RETURN THIS FORM MAY DEEM YOUR PROPOSAL NON-RESPONSIVE

APPENDIX F - DRUG-FREE WORKPLACE AFFIDAVIT

RFP NO. 2018-01

FLORIDA STATE STATUTE 287.087

Identical Tie Bids: Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied CONTRACTORS have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under Contract a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under Contract, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

CONTRACTOR's Signature

APPENDIX G - PRICE PROPOSAL FORM

RFP NO. 2018-01

The completed pricing workbook is submitted as the all inclusive pricing to provide the TPA with the Accounting System in accordance with the Requirements/Scope of Work/Services set forth in this RFP document.

The Respondent certifies by signature below the following:

- a. This pricing is current, accurate, complete, and is presented as the Total Pricing, including "out-of-pocket" expenses (if any), for the performance of this Contract in accordance with the Requirements/Scope of Work/Services of this RFP.
- b. This Proposal is current, accurate, complete, and is presented to the TPA for the performance of this contract in accordance with all the requirements as stated in this RFP.
- c. The Proposal is submitted without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Proposal for the same materials, services, and supplies and is, in all respects, fair and without collusion or fraud.
- d. The financial stability to fully perform the terms and conditions as specified herein. The TPA reserves the right to request financial information from the respondent at any time during the solicitation process and in any form deemed necessary by the TPA.

IMPORTANT: FAILURE TO SUBMIT THESE PAGES, INCLUDING ALL REQUIRED INFORMATION AND SIGNATURES, WILL BE CAUSE FOR "IMMEDIATE REJECTION" OF THE ENTIRE PROPOSAL RESPONSE.

SIGNATURE: _____ TITLE: _____

NAME (PRINT): _____ PHONE NO. _____

COMPANY: _____ ADDRESS: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____ as _____ for _____.

Personally known to me _____ OR

Has produced Identification _____, type of identification produced _____

NOTARY PUBLIC

My Commission Expires: _____

APPENDIX H - ANTICIPATED DBE PARTICIPATION STATEMENT

RFP Number: _____

Contractor's Name: _____

Contractor's FEID Number: _____

Expected amount of contract dollars to be subcontracted to DBE(s): \$ _____

OR

It is our intent to subcontract _____% of the contract dollars to DBE(s).
Listed, below are the proposed DBE sub-contractors:

<u>DBE (s) Name</u>	<u>Type/Specialty Work</u>	<u>Dollar Amount/ Percentage</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submitted by: _____ Title: _____
(Type or Print)

Date: _____

Note: This information is used to track and report anticipated DBE participation in TPA contracts. The anticipated DBE amount will not become part of the contractual terms