

# PALM BEACH TPA AGREEMENT NO. 2021-XX

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

## SERVICES/GOODS

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

## WITNESSETH

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

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

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

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

### Section 1. Incorporation of Facts; Definitions

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

- 8. "MPO Agreement" means Metropolitan Planning Organization Agreement.
- 9. TPA Fiscal year is July 1 through June 30.

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

Section 3. **Term.** This Agreement shall take effect on \_\_\_\_\_, 20\_\_ and shall remain in full force and effect for a period of \_\_\_\_\_ ( ) months/days, expiring \_\_\_\_\_, 20\_\_. *Two (2) additional twelve (12) month renewal options(s) may be exercised at the TPA's sole discretion. If the TPA elects to exercise the option(s), the TPA will notify the Contractor in writing of its election at least fifteen (15) days prior to the expiration of the then current term of the Agreement at the address set forth in Section 11 of this Agreement.*

**Section 4. Services.**

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

**Section 5. Payments.**

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

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

*\* If TPA elects to extend the agreement.*

- B. CONTRACTOR will bill the TPA on a monthly basis for services that have been completed and approved by the TPA. The CONTRACTOR'S charges for all work provided to the TPA shall not exceed the rates set forth in the Service Rate Schedule attached as Exhibit "B" which is hereby incorporated into this Agreement and made a part hereof. The parties agree that annual increases to said Service rates shall not exceed 3% (three percent), unless increased for good cause established by the CONTRACTOR and accepted by the TPA's Executive Director. Each invoice shall reflect charges for current period services. All invoices submitted by CONTRACTOR shall be itemized in sufficient detail so that the TPA and any other governmental entity with oversight over expenditures made pursuant to this Agreement may perform proper pre and post U.S. DOT or FDOT required audits of the invoices and determine that the Services have been properly performed.
- C. Within ten (10) TPA business days of receipt of the invoice, the TPA will evaluate the Services rendered to determine conformity to mutually agreed upon specifications. The TPA may deliver a notice of rejection to CONTRACTOR if the provided Services fail to conform to the mutually agreed upon specifications. CONTRACTOR shall, at no cost to TPA, promptly remedy such failure. Failure to deliver a notice of rejection within ten (10) TPA business days of receipt of the invoice constitutes acceptance Services.
- D. TPA shall pay CONTRACTOR for each invoice within thirty (30) days of TPA acceptance. Payments will be remitted to the CONTRACTOR at the address set forth in this Agreement or such other address as is designated in writing by CONTRACTOR to TPA.
- E. CONTRACTOR shall indicate "final invoice" on its last/final billing to TPA. This shall constitute CONTRACTOR's certification that all Services have been properly performed and all charges and costs properly invoiced to the TPA. CONTRACTOR shall waive the right to any charges not included on the final invoice. If any invoices are to be paid by a state or federal agency or TPA is to be reimbursed for expenditures it has made, CONTRACTOR shall submit all supporting documentation or detail required by TPA for such purposes and in accordance with the schedule established by TPA.

#### Section 6. **Audits.**

- A. CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least seven (7) non-calendar years after completion or termination of this Agreement. 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 in its sole discretion.
- 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. FDOT, the State of Florida Chief Financial Officer, Comptroller or Auditor General, FTA or 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.

- C. The CONTRACTOR agrees to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

**Section 7. Termination.** This Agreement may be terminated by the CONTRACTOR for cause upon thirty (30) days written notice to the TPA's representative, at its address set forth in this Agreement or other address designated in writing by the TPA in a notice to the CONTRACTOR. It may also be terminated, in whole or in part, by the TPA, with cause, upon five (5) days written notice to the CONTRACTOR, and without cause and for the convenience of the TPA upon thirty (30) 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 thirty (30) 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 8. Indemnification.** CONTRACTOR shall, to the fullest extent permitted by law, indemnify and hold harmless the TPA, FDOT, FHWA, FTA, and U.S. DOT, including their respective agents, officers, employees, and elected officials from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of any applicable sovereign immunity.

**Section 9. Insurance.** CONTRACTOR shall, at its sole expense, 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.

- A. Commercial General Liability. The CONTRACTOR shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence not less than a \$1,000,000 annual general aggregate inclusive of amounts provided by an umbrella or excess policy. 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. Commercial general liability insurance coverage shall include, as a minimum: (i) Premises Operations, (ii) Personal Injury Liability, (iii) Property Damage, (iv) Expanded Definition of Property Damage, (v) Products and Completed Operations, and (vi) Incidental Contractual Liability in both the primary and any umbrella policy coverage.
- B. Business Automobile Liability. CONTRACTOR shall maintain Business Automobile Liability at a limit of liability not less than \$300,000 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.
- C. 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.
- D. Additional Insured. The CONTRACTOR shall endorse the TPA and FDOT 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 MPO dba Palm Beach Transportation Planning Agency, Florida Department of Transportation, and their respective Officers, Employees, Elected Officials, and Agents." The CONTRACTOR shall provide the Additional Insured endorsements coverage on a primary basis.
- E. Waiver of Subrogation. The CONTRACTOR hereby waives any and all rights of Subrogation against the TPA and FDOT, and their respective Officers, Employees, Elected Official, 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.
- F. Evidence of Insurance. Prior to the CONTRACTOR commencing any Work pursuant to this Agreement, satisfactory evidence of the required insurance shall be provided to the TPA. Satisfactory evidence shall be either: (a) a copy of the declaration page certified by the insurer to the TPA designating the TPA as a "loss payee" or "additional insured" as appropriate; or (b) a certified copy of the actual insurance policy. The TPA, at its sole option, may from time to time request a certified (by the insurer) copy of any or all insurance policies required by this Agreement. In addition, the CONTRACTOR, in the manner provided in this Agreement for giving notice, shall forward to the TPA any of the instruments required hereunder within thirty (30) days of request by the TPA or, on a yearly basis, not later than the effective date of any policy or policy renewal. Use of a certificate of insurance shall not be acceptable proof that the insurance is in force. If the CONTRACTOR does not furnish proof of insurance as set forth in this Section within thirty (30) days of the receipt of a request therefore from the TPA or on a yearly basis, or if the

CONTRACTOR fails to at all times maintain adequate insurance as required herein, the TPA may, but shall not be obligated to obtain insurance to satisfy this Section 9. In such event, the TPA shall invoice the CONTRACTOR for the costs and premiums attributable to such insurance, and the CONTRACTOR shall pay to the TPA, within ten (10) days after the CONTRACTOR's receipt of the invoice, all such insurance costs and premiums.

The policies of insurance and any notices thereunder shall be delivered to:

Palm Beach Transportation Planning Agency  
c/o: Executive Director  
301 Datura Street  
West Palm Beach, Florida 33401

G. 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 shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the policy notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

H. Right to Review. 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 10. Application of Federal Requirements.** This Agreement is funded, in whole or 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. CONTRACTOR shall perform the duties and obligations described in Exhibit C and shall complete the representations and provide any information required therein.

**Section 11. Notice.** Notices, invoices, communications, and payments hereunder shall be deemed made if given by certified U.S. Mail, postage prepaid, return receipt requested; by overnight courier service; or by hand delivery. All notices, invoices, or communications shall be addressed as follows.

If to TPA: Nick Uhren  
Executive Director  
Palm Beach Transportation Planning Agency  
301 Datura Street  
West Palm Beach, FL 33401

If to CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall not be deemed complete until receipt of the delivery. Either party to this Agreement may unilaterally change its addressee or delivery address by giving notice to the other party to this Agreement.

## Section 12. Other Miscellaneous Provisions

- A. Agreement. 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. 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. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning. 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. 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.
- B. Venue. This Agreement shall be governed by the laws of the State of Florida. Venue for any disputes arising out of this Agreement and for any actions involving the enforcement or interpretation of this Agreement will be in the State courts of the 18th Judicial Circuit of Palm Beach County, Florida, or the U.S. District Court, Southern District of Florida.
- C. Remedies. 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. 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.
- D. E-Verify. CONTRACTOR agrees that it will utilize the U.S. Department of Homeland Security's E-Verify System (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. 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.

CONTRACTOR acknowledges that the TPA receives funds from FDOT, and that such funds may be used to pay CONTRACTOR for the services it provides under this Agreement. CONTRACTOR further acknowledges that FDOT considers the employment of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. The CONTRACTOR affirms to the TPA that it will not employ, or cause to be employed by subcontractors, any 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. If CONTRACTOR knowingly employs or causes to be employed unauthorized aliens in connection with this agreement, such violation will be cause for unilateral cancellation of this Agreement.

- E. Restrictions on Lobbying. 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.

No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

The CONTRACTOR agrees that to no federally-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. If any funds other than federally appropriated funds have been paid by the TPA to any person 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 Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

CONTRACTOR agrees that all subcontractors shall certify and disclose accordingly.

- F. Conflict of Interest. CONTRACTOR agrees to comply with Conflicts of Interest requirements set forth in 23 CFR §1.33, and Section 112.311, Florida Statutes.

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

CONTRACTOR agrees that no member, officer, or employee of the TPA or of the locality during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

- G. Independent Contractor Relationship. CONTRACTOR is and shall be, in the performance of the Services, 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.
- H. 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, which the TPA may deny for any reason. Likewise, sub-contractors pursuant to this Agreement must also be approved by the TPA, subject to a right of denial for any reason.
- I. No Express or Intended Third Party Beneficiaries Created. The parties acknowledge that this Agreement is not intended to be a third-party beneficiary contract and confers no rights on any party other than the TPA and CONTRACTOR.
- J. Disadvantaged Business Enterprises (DBE). CONTRACTOR agrees to ensure that that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to



participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

- K. 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.
- L. Federal and State Taxes. The TPA is exempt from payment of the Florida State Sales and Use Taxes. The TPA may sign or have cause to have signed an exemption certificate submitted by the CONTRACTOR. 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 TPA's Tax Exemption Number in securing such materials. 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.

[Remainder of page left blank intentionally. Signatures on following page]

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

CONTRACTOR

\_\_\_\_\_

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

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

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

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

ATTEST FOR CONTRACTOR:

\_\_\_\_\_

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

TPA

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

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

Nick Uhren  
TPA Executive Director

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

ATTEST FOR TPA:

\_\_\_\_\_

Margarita Pierce, TPA Executive Administrator

**CONTRACT EXHIBIT A – SCOPE OF SERVICES**

**CONTRACT EXHIBIT B – PRICE PROPOSAL**

## **CONTRACT EXHIBIT C – REQUIRED FEDERAL AGREEMENT CLAUSES**

During the performance of this contract, the consultant or contractor, for itself, its assignees, and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

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

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

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

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

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

- A. Compliance with REGULATIONS: CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") 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 contract.
- B. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102, section 202 of the Americans with Disabilities Act of 1990, as amended, 42 USC §12132, and Federal transit law at 49 USC §5332, as each may be amended from time to time, CONSULTANT agrees, with regard to the work performed by it during the contract, that it shall basis of race, color, creed, national origin, sex, age, or disability in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall 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. In addition, CONSULTANT agrees to comply with all applicable federal implementing regulations and any other implementing requirements FTA and or FHWA may issue.
- C. Solicitations for Sub-contractors, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANTS's obligations under this contract and the REGULATIONS relative to nondiscrimination on the basis of race, color, national origin, or sex.
- D. Equal Employment Opportunity:
  - (1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and Federal transit laws at 49 USC §5332, CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any other applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship.

In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

- (2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623 and federal transit law at 49 USC §5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.

- E. CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only to identify the affected parties.
- F. Information and Reports. CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Florida Department of Transportation, or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or 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 CONSULTANTS's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:
  - (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (2) cancellation, termination, or suspension of the contract, in whole or in part.
- H. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (8) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

The contractor shall take such action with respect to any sub-contract or procurement as the Florida Department of Transportation or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- I. Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from



discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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

7. Contract Work Hours and Safety Standards Act Requirements. If the solicitation involves a construction project in excess of \$2,000 or a non-construction project to which the Act applies over \$2,500, and is financed at least partly by loans or grants from the Federal Government, the contractor agrees to comply with the Contract Work Hours and Safety Standards Act, codified at 40 USC 3701, et seq. The contractor also agrees to include a similar requirement in all subcontracts financed in whole or in part with federal assistance.

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

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