



REQUEST FOR SERVICES

RFS NO. FY24-08

The Palm Beach MPO
d/b/a
The Palm Beach Transportation Planning Agency
is seeking Proposals for:

Transportation Improvement Program (TIP) Tool

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

Palm Beach Gardens Mayor Chelsea Reed, TPA Governing Board Chair

**Valerie Neilson, Executive Director
Palm Beach Transportation Planning Agency
301 Datura Street
West Palm Beach, FL 33401**

DATE ISSUED: March 22, 2024 @ 5:00 P.M. EST

CLOSING DATE AND TIME: April 5, 2024 @ 5:00 P.M. EST

CHECKLIST OF REQUIRED FORMS AND REPORTS

IMPORTANT!

FAILURE TO:

- 1. SUBMIT THE FORMS CONTAINED IN THIS CHECKLIST;**
- 2. SUBMIT THE FORMS COMPLETED IN IT'S ENTIRETY ;**
- 3. MEET ALL PROPOSAL REQUIREMENTS;**
- 4. PROVIDE ALL SIGNATURES SIGNED BY AN AUTHORIZED REPRESENTATIVE ; and**
- 5. NOTARIZE DOCUMENTS THAT REQUIRE NOTARIZATION,**

WILL BE CAUSE FOR THE PROPOSAL TO BE DEEMED "NON-RESPONSIVE" AND WILL RESULT IN IMMEDIATE REJECTION OF THE ENTIRE PROPOSAL.

____ ATTACHMENT 1 - Authorized Representative Declarations Form (Duly Notarized)

____ ATTACHMENT 2 - Business Information Form

____ ATTACHMENT 3 - Amendment Acknowledgment Form

____ ATTACHMENT 4 - Drug Free Workplace Certification Form

____ ATTACHMENT 5 – DBE Bidders Opportunity List

____ ATTACHMENT 6 – Reference Form

Additional requirements for the proposal may be found throughout the RFS document. Please read the RFS document in its entirety to ensure that all requirements have been met. Any proposal submitted without the required documentation may be considered non-responsive and subsequently ineligible for consideration.

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SECTION 1 - GENERAL INFORMATION

1.1 ISSUING OFFICE

This Request for Services (RFS) is issued by the Palm Beach MPO d.b.a. the Palm Beach Transportation Planning Agency (hereinafter referred to as “TPA”). The TPA is the sole point of contact concerning this RFS. All communications regarding this RFS must be done through the TPA as outlined in Section 1.6, Contact Person. Contacting individuals at the TPA or its officers, other than the designated Contact Person, will be grounds for immediate rejection of any submittal. The procurement standards governing this RFS can be found on the TPA website at www.PalmBeachTPA.org/Business.

1.2 PURPOSE OF THE PROJECT

The TPA is seeking proposals for the hosting, creation, and maintenance of a Transportation Improvement Program (TIP) Tool to manage the TPA’s annual TIP process and the status of projects from prioritization to construction.

1.3 PERIOD OF CONTRACT

The proposed effective date of this Contract is April 18th, 2024. The TPA anticipates the Contract resulting from this solicitation will continue for a period of thirty-six (36) months, starting at the date the tool is activated (anticipated April 19, 2024 until April 18, 2027). Two (2) additional twelve (12) month renewal options(s) may be offered at the TPA’s sole discretion.

1.4 TIMETABLE

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

Activity	Date	Time	Location
RFS available for download	3/22/2024	5:00 pm	www.PalmBeachTPA.org/Business
Deadline for receipt of questions or comments	3/28/2024	5:00 pm	Submit via e-mail to finance@PalmBeachTPA.org
Response to questions and RFS amendments (if any) available for download	3/29/2024	5:00 pm	www.PalmBeachTPA.org/Business
Deadline for receipt of proposals	4/5/2024	5:00 pm	www.DemandStar.com or 301 Datura St. West Palm Beach, FL 33401
Evaluation by TPA Staff	04/8/2024 - 04/9/2024		301 Datura St. West Palm Beach, FL 33401

Activity	Date	Time	Location
Posting of Notice of Intent to Award	4/8/2024-4/9/2024	5:00pm	www.PalmBeachTPA.org/Business
Contract Start Date	4/19/2024	9:00am	301 Datura St. West Palm Beach, FL 33401

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

1.5 ENTERING PROPOSALS

All proposals must be submitted by 5:00 p.m. on April 5, 2024.

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 identified therein.

Respondents may submit electronically via DemandStar.

www.DemandStar.com

The Proposal package, including all signed/authorized/notarized forms, can be uploaded through the DemandStar website. The bid will be available under the Palm Beach Transportation Planning Agency name.

Respondents also have the option to submit Proposals in person or by mail.

The TPA cannot be held liable for documents that become lost, misplaced, or delayed by any and all delivery services including, but not limited to, USPS, FedEx, UPS, etc.

Respondents submitting Hard/paper copies of the Proposal must submit in a package with an unbroken seal, including all signed/authorized/notarized forms. All Proposals should be formatted to print on letter size paper with arial type in 11 or 12 pt. text. Any proposal materials submitted unsealed are not eligible for consideration.

In person or mail submittals must be addressed and delivered to the Contact Person:

**Palm Beach TPA c/o Jessica Lopez
301 Datura St.
West Palm Beach, FL 33401**

1.6 CONTACT PERSON

The TPA Contact Person for this RFS is Jessica Lopez, Procurement & Contracts Coordinator, (561) 725-0821, e-mail address: finance@PalmBeachTPA.org.

Any questions, explanations, or other requests desired by Proposer(s) regarding this RFS must be made in writing to the Contact Person via e-mail or U.S. Mail no later than the date specified and to the address listed in the RFS Timetable (Section 1.4). The request must contain the

Respondent's name, address, phone number, and e-mail address, as well as the name of the individual submitting the request.

Respondents are advised that from the date of release of this RFS until award of the contract, no contact with TPA staff or members of the TPA Governing Board concerning this RFS is permitted, except as authorized in writing by the Contact Person designated herein.

The TPA's office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding TPA designated holidays.

1.7 ADDITIONAL INFORMATION / AMENDMENT(S)

Changes to this RFS, when deemed necessary by the TPA, will be completed only by written Amendment(s) issued no later than the date specified in the RFS Timetable (Section 1.4). Respondents should not rely on any representations, statements, or explanations other than those made in the RFS or in any Amendment to this RFS. In the case of any apparent conflict between the RFS and any Amendment issued, the latest Amendment issued shall prevail.

As they are issued, all Amendments to solicitations will be posted under the applicable solicitation on 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.

It is the Respondent's sole responsibility to assure receipt of all Amendments. The Respondent should verify with the designated Contact Person (Section 1.6) 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 as part of their proposal. The Amendment Acknowledgement Form will be attached to the amendment documentation posted to the website.

The TPA shall not be responsible for the completeness of any RFS package not downloaded directly from the TPA website.

SECTION 2 - GENERAL TERMS AND CONDITIONS

2.1 PROPOSAL GUARANTEE

Respondent guarantees their commitment, compliance, and adherence to all requirements of the RFS by submission of their Proposal. For this submittal, the TPA is not requiring a proposal bond.

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 PROPOSAL

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 Respondent 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 RFS Timetable (Section 1.4) are late and shall not be considered.

2.5 RFS 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 RFS or in the Proposals received as a result of this RFS; postpone or cancel, at any time, this RFS process; or re-issue this RFS.

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 shall 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 in accordance with the TPA's Procurement Policy.

2.7 PROPRIETARY / CONFIDENTIAL INFORMATION

Any material submitted in response to this RFS is considered a public document or what is defined as a "public record" in accordance with Section 119.011, Florida Statutes (F.S.). As a result, all submittals will be subject to the Florida public records law, Chapter 112, Florida Statutes. This includes material which the Respondent might consider to be confidential. All submitted information that the Respondent believes to be confidential and exempt from disclosure (*i.e.*, a trade secret or as provided for in Section 119.0715 and Section 688.002, F.S.) must be specifically identified as such. Upon receipt of a public records request for such information, a determination will be by the TPA made as to whether the identified information is in fact confidential. If the document is withheld from public disclosure pursuant to Section 119.0715, the Respondent may, at the TPA's option, be required to defend the TPA's decision to withhold disclosure of the document or portion thereof that the Respondent has designated as a "trade secret."

2.8 NEGOTIATIONS

The TPA, at its sole discretion, reserves the right to enter into Contract negotiations with the highest evaluated responsive, responsible Respondent(s). If the TPA and said Respondent(s) cannot negotiate a successful Contract, the TPA may terminate said negotiations and begin negotiations with the next highest evaluated responsive, responsible Respondent. This process will continue until the Contracts acceptable to the TPA have been executed or all proposals are rejected. No Respondent shall have any rights against the TPA arising from such negotiations or termination thereof.

2.9 RIGHT TO PROTEST

In accordance with the Palm Beach Transportation Planning Agency Procurement Policy, Requests for Services are exempt from protests.

2.10 TITLE VI, EQUAL OPPORTUNITY EMPLOYMENT, AND NONDISCRIMINATION

All proposers and the selected consultant will abide by applicable nondiscrimination authorities and will not discriminate on the basis of race, color, national origin, sex, age, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression, religion, family status, or any other characteristic protected by federal, state, or local laws.

The selected consultant will place or cause to be placed in any information developed for public dissemination the following statement: The TPA does not discriminate on the basis of race, color, national origin, sex, age, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression, religion, family status, or any other characteristic protected by federal, state, or local laws.

For more information, contact Melissa Murray, Public Relations Director at info@palmbeachtpa.org (561) 725-0813 or 711 (for hearing impaired). Those individuals requiring language services (free of charge) or accommodation for a disability should contact the TPA at least 5 days in advance.

2.11 DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

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. The objectives of the Disadvantaged Business Enterprise (DBE) Program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards, help remove barriers to participation, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility, and ensure narrow tailoring of the program.

The TPA, the CONSULTANT, and the TPA's other contractors, shall take all necessary and reasonable steps to ensure the disadvantages businesses have an opportunity to compete for and perform the contract work of the TPA, in a non-discriminatory environment.

The TPA, the CONSULTANT, and the TPA's other contractors, shall not discriminate on the basis of race, color, national origin, sex, age, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression, religion, family status, or any other characteristic protected by federal, state, or local laws, in the award and performance of its contracts.

The policy covers in part the applicable federal regulations and the applicable statutory references contained therein for the Disadvantaged Business Enterprise Program Plan, Chapters 337 and 339, Florida Statutes, and Rule Chapter 14-78, Florida Administrative Code.

A. CONTRACT AWARD CRITERIA

The TPA is required to implement the FDOT DBE Program on any contracts with FHWA funds. In accordance with 49 CFR Part 26.21, and the FDOT DBE Program Plan, DBE participation on FHWA-assisted contracts must be achieved through race-neutral methods. FDOT operates a 100% race and gender-neutral DBE program. Therefore, no specific DBE contract goal may be applied to this project. Nevertheless, the TPA is

committed to supporting the identification and use of DBEs and other small businesses and encourages all reasonable efforts to do so.

- a. The TPA will not require use of DBEs by the consultant as a matter of contract, nor will it seek sanctions for failing to use DBEs.
- b. The TPA will not use bidder DBE commitments to evaluate bidder proposals or to select the winning consultant.
- c. The TPA will not employ local or regional preferences in the evaluation or award of the contract.
- d. The TPA is precluded from using any business program besides the FDOT DBE program. County or municipal small, minority or women's programs will not be used in award, evaluation, or delivery of the contract.

Furthermore, the TPA recommends the use of certified DBE's listed in the Florida Unified Certification Program (UCP) DBE Directory, who by reason of their certification are ready, willing, and able to provide and assist with the services identified in the scope of work. Assistance with locating DBEs and other special services is available at no cost through FDOT's Equal Opportunity Office DBE Supportive Services suppliers. More information is available by visiting <http://www.fdot.gov/equalopportunity/serviceproviders.shtm> or calling 850-414-4750.

B. DBE CERTIFICATION

Only those firms certified by 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.

C. DBE REPORTING

All bidders must provide Bidders Opportunity List information in the FDOT Equal Opportunity Compliance (EOC) System. Instructions for doing so are located on the FDOT website at <https://www.fdot.gov/equalopportunity/eoc.shtm>.

The selected consultant must use the FDOT EOC system to report the use (or lack thereof) of DBEs. The consultant must enter both its DBE commitments and subcontractor list in EOC. The selected consultant must access FDOT at least every thirty (30) days to update commitments and enter EOC payments.

For further assistance or information contact the system administrator at eoohelp@dot.state.fl.us.

2.12 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).

2.13 FEDERAL DEBARMENT

By submitting a response to this RFS, the Offeror certifies that neither it nor any of its principals (which includes officers, directors, or executives) is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation on this transaction by any Federal department or agency.

2.14 RESPONSIVE PROPOSALS

Each Proposal will be reviewed to determine responsiveness to the RFS. A Responsive Proposal is one which has been signed, has been submitted by the specified submission time, and has provided the information required as stated in Section 3. Proposals deemed to be non-responsive will be rejected from further evaluation by the TPA.

The TPA, at its sole discretion, reserves the right to enter into Contract negotiations with the highest evaluated responsive, responsible Respondent. If the TPA and said Respondent cannot negotiate a successful contract, the TPA may terminate said negotiations and begin negotiations with the next highest evaluated responsive, responsible Respondent. This process may continue until the Contract acceptable to the TPA has been executed or all Proposals are rejected. No Respondent shall have any rights against the TPA arising from such negotiations or termination thereof.

The TPA will review each Proposal to determine if the Proposal is responsive to the RFS. Proposals deemed to be non-responsive will be rejected without being evaluated by the TPA. A responsive Proposal is one which:

- Includes all required documents listed on the "CHECKLIST OF REQUIRED FORMS AND REPORTS"
- Has been signed, authorized, and notarized by all parties
- Has been submitted by the specified submission time
- Has completed mandatory DBE Reporting as outlined in Section 2.11.C
- Has provided the information required to be submitted with the Proposal (as stated in Section 3)
- Otherwise complies with the requirements of this RFS.

While poor formatting, poor documentation, and/or incomplete or unclear information may not be cause to reject a Proposal without evaluation, such substandard submissions may adversely impact the evaluation of a Proposal, especially information relating to establishing financial/business stability. Respondents who fail to comply with all the required and/or desired elements of this RFS, do so at their own risk.

Proposals will only be considered from firms regularly engaged in the business of providing the goods and/or services required by this solicitation. The Proposer must be able to demonstrate a good record of performance and have enough personnel to ensure that they can satisfactorily provide services if awarded the Contract as a result of this solicitation.

Notwithstanding these proposal requirements, the TPA reserves the right, at its sole discretion, to waive any minor irregularity relating to the proposal. The TPA is not required to request that the Respondent address any perceived irregularity. However, the TPA may inquire into any perceived irregularity. Upon request, it shall be the responsibility of the respondent to address the determined minor irregularity within a time frame specified by the TPA (normally within two

working days of request). Failure of a respondent to provide the required information within the specified time frame is considered sufficient cause to deem the proposal non-responsive.

2.15 EXCEPTIONS TO THE RFS

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 "Proposal Requirements" as stated in Section 3. The TPA is under no obligation to accept any proposed exceptions or alternatives.

2.16 TPA'S EXCLUSIVE RIGHTS

The TPA reserves the exclusive right 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 Proposals if found not to be in the best interest of the TPA.

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

2.17 SELECTION PROCESS

All Responsive Proposals will be evaluated by TPA Staff appointed by the Executive Director. Staff will evaluate and score the responsive and qualified Proposals based on the evaluation criteria set forth in Section 2.18. 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.

The Selection Process will occur on the date(s) provided in Section 1.4 Timetable.

The Staff member or members will score based on the Evaluation Criteria in Section 2.18 and then rank the proposals based on the proposals' total scores. The Contact Person (Section 1.6) will establish an overall ranking based on staff member's individual rankings.

Staff may choose to recommend a final ranking or recommend that the TPA reject all Respondents.

The final recommendation will be provided to the TPA Executive Director. The TPA will publish a Notice of Intent to Award to the selected Respondent.

In the event the staff members rankings result in a tie for determining most highly qualified proposal(s), the Committee shall select the proposal(s) with the highest average total weighted score from the individual Committee member scores. In the event the tie persists, a coin toss shall determine the winner.

2.18 EVALUATION CRITERIA

TPA Staff shall evaluate and rank the Proposals that satisfy the purpose of the project using the following evaluation criteria: Maximum Points 100

Evaluation Criteria	Percentage
Easily import, export, and manipulate data for each project within the tool	25
Easily find projects, summarize information, and create reports for staff and the public	25
Provide mapping and GIS integration	20
Help and Customer Service Support	15
Provide additional features related to the TIP process	15
Total	100

2.19 AWARD OF CONTRACT

One (1) contract, if any, will be awarded to the responsive, responsible Respondent(s) whose Proposal is considered to be the most advantageous to the TPA based on the TPA's evaluation after review of every such proposal including, but not limited to, price.

The TPA may reject and choose to re-advertise for all or any part of this RFS, whenever it is deemed in the best interest of the TPA. The TPA shall be the sole judge of what is in its "best interest."

2.20 STANDARD CONTRACT PROVISIONS

The selected Respondent will be required to execute a contract substantially similar to the Sample TPA Contract attached hereto as "Appendix A." If a Respondent has comments related to any of the provisions in this RFS and/or the sample contract, comments must be submitted in writing no later than the date specified in the RFS Timetable (see Section 1.4).

Standard TPA Contract provisions (general and specific) will be incorporated into any contract resulting from this RFS. 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.

2.21 COMMENCEMENT OF WORK

This RFS does not, by itself, obligate the TPA. The TPA's obligation will commence when an agreement is executed by the Executive Director and provided to the Respondent and a notice to proceed issued in writing by the TPA. 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.

2.22 INSURANCE REQUIREMENTS

Prior to the effective date of a Contract, it shall be the responsibility of any successful Respondent to provide evidence of the minimum amounts of insurance coverage specified in Exhibit C, Section 15, to Palm Beach Transportation Planning Agency, Attention: Executive Director, 301 Datura Street, West Palm Beach, FL 33401.

Each 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 or thereafter as may be required by the Contract, insurance coverages and limits (including endorsements) as described herein. 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 a 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.

2.23 INDEMNIFICATION

The successful Respondent 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 Respondent and other persons employed or utilized by the successful Respondent in the performance of the services under the Contract.

2.24 TAXPAYER IDENTIFICATION NUMBER

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

2.25 AUTHORIZED SIGNATURE

The authorized representative signature required on all Proposals and the Contract must be made by an officer of the company who is legally authorized to enter a contractual relationship in the name of the respondent ("Authorized Person").

SECTION 3 - PROPOSAL REQUIREMENTS

3.1 TABLE OF CONTENTS AND INTRODUCTION

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

3.2 APPROACH AND DEMONSTRATION OF SCOPE OF SERVICES

The Respondent shall document the product, process, and their experience in providing a Transportation Improvement Program (TIP) tool that provides project tracking, importing and exporting of data, and other services as provided in the Section 4 Scope of Services.

3.3 PRICE PROPOSAL

The Respondent shall include a price proposal in the submission for the Scope of Services including:

- Annual subscription fee (identify all factors affecting subscription)
- Any fees and services that are in addition to the base product subscription
- If required, any upfront cost to establish the product application and train TPA staff.
- Cost to provide ongoing support if not included in annual subscription fee. If the price proposal varies based on any additional factors, Respondent must provide this information.

The Respondent is responsible for the accuracy of the pricing provided as part of the Proposal. Any errors in providing an accurate price response due to inaccuracies in the provided template are the sole responsibility of the Respondent.

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SECTION 4 – SCOPE OF SERVICES

The Contractor shall provide the following product and services for managing the Transportation Improvement Program (TIP) and transportation projects:

1. Easily import, export, and manipulate data for each project
 - a. Maintain multiple years of data and multiple versions of a TIP
 - b. User mass import and export of transportation projects, especially Florida Department of Transportation (FDOT) Work Program formatted data
 - c. Edit transportation projects within the database for multiple users at the same time
 - d. Add additional custom fields to the database
2. Easily find projects, summarize information, and create reports for staff and the public
 - a. Creation of print-friendly and visually appealing documents, including project sheets direct to PDF
 - b. Creation of summary tables and comparison reports
 - c. Filter project data by various fields, such as jurisdiction or lead agency
 - d. ADA accessibility for viewing the application
3. Provide mapping and GIS integration
 - a. User ability to edit mapped data
 - b. User ability to seamlessly integrate data into other applications, ex: ESRI Online
4. Help and Customer Service Support
 - a. Provide user onboarding and ongoing training
 - b. Provide ongoing customer support with continuous improvements to the process for automating data updates and analysis.
5. Provide additional features related to the TIP process, including:
 - a. Funding Obligations from prior fiscal years
 - b. Integration of Long Range Transportation Plan (LRTP) project tracking
 - c. Prioritization of Projects
 - d. Scoring of projects

SECTION 5 - DOCUMENTS TO BE SUBMITTED IN THE PROPOSAL

IMPORTANT!

FAILURE TO:

1. SUBMIT THE FORMS CONTAINED IN THIS CHECKLIST.
2. SUBMIT THE FORMS COMPLETED IN ITS ENTIRETY.
3. MEET ALL PROPOSAL REQUIREMENTS.
4. PROVIDE ALL SIGNATURES SIGNED BY AN AUTHORIZED REPRESENTATIVE;
and
5. NOTARIZE DOCUMENTS THAT REQUIRE NOTARIZATION.

WILL BE CAUSE FOR THE PROPOSAL TO BE DEEMED “NON-RESPONSIVE” AND WILL RESULT IN IMMEDIATE REJECTION OF THE ENTIRE PROPOSAL.

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ATTACHMENT 1 - Authorized Representative Declarations Form (Duly Notarized)

_____ (Name of Representative) for:

_____ (Organization), being duly sworn, deposes and says that:

1. The Signatory is an “Authorized Agent” who can bind the above-listed entity to all terms and conditions of the Agreement.
2. The Signatory is fully informed respecting the preparation and contents of the attached Agreement and of all Forms, Affidavits and documents submitted in support of such Agreement.
3. The Signatory declares no portion of the sum that organization may receive as a result of this Solicitation will be paid to any employees of the Palm Beach MPO dba Palm Beach Transportation Planning Agency (TPA), its elected officials, and/or its consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.
4. The Signatory declares that the Representative represented herein shall not discriminate against any person in its operations, activities, or delivery of services under any agreement it enters into with the TPA. The same shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.
5. The Signatory has attached, if applicable, a list of and description of any relationships, professional, financial or otherwise, that the Representative may have with the TPA, its elected or appointed officials, its employees or agents or any of its agencies or component units for the past two (2) years. Additionally, the Representative agrees and understands that Representative shall give the TPA written notice of any other relationships professional, financial or otherwise, that the Representative enters into with the TPA its elected or appointed officials, its employees or agents or any of its agencies or component units during the period of this Agreement.
6. The Quote or Estimate is provided as a genuine offer without prior understanding, agreement, or connection with any corporation, firm, or person providing a Quote or Estimate for the same materials, services, and supplies and is, in all respects, fair and without collusion or fraud.
7. The Quote or Estimate is submitted as the current, accurate, complete, and all-inclusive Total Pricing, including “out-of-pocket” expenses (if any), to provide the TPA with Services in accordance with the Requirements/Services set forth in this agreement.
8. Any hourly rates quoted in the attached Quote or Estimate are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Representative or any other of its agents, representatives, owners, employees, or parties in interest, including this affiant.
9. All Forms, Affidavits and documents submitted in support of and included in this Agreement are true and accurate.
10. No information that should have been included in such Forms, Affidavits and documents has been omitted; and
11. No information that is included in such Forms, Affidavits or documents is false or misleading.

12. The Representative has the financial stability to fully perform the terms and conditions as specified herein and will provide financial information to document this upon request by the TPA at any time during the solicitation process and in any form deemed necessary by the TPA.
13. Representative and any sub-contractors or sub-consultants shall comply with Section 448.095, Fla. Stat., "Employment Eligibility," including registration and use of the E-Verify system to verify the work authorization status of employees. Failure to comply with Section 448.095, Fla. Stat. shall result in termination of the resulting Contract/Purchase Order. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If the contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.
14. The Representative will register with the Florida Division of Corporations as either a Florida or foreign corporation prior to the effective date of the contract with the TPA if it is not presently registered.

Signature

(CORPORATE SEAL)

Print Name

Title

Date

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

Personally known to me _____ OR

Has produced Identification _____, type of identification produced _____.

Notary Public, State of _____

(Printed Name)

My commission expires: _____

ATTACHMENT 2 - Business Information Form

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

Entity Address: _____

Contact Person: _____ Title: _____

Telephone number: (____) _____ Email: _____

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

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

Federal ID 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, as of what date? _____

Number of years business has been in operation under current name: _____

Number of years business has had successful experience providing services to governmental entities: _____

Please list all Subcontractors, Subconsultants, and Suppliers to be used in connection with performance of the Contract. (A Subconsultant Form shall be completed and included for each entity listed below). If no subconsultants are to be used, please indicate below:

☐ No subconsultants or subcontractors shall be used in connection with performance of the contract.

OR

Legal Entity Name #1: _____

Legal Entity Name #2: _____

Legal Entity Name #3: _____

Legal Entity Name #4: _____

Legal Entity Name #5: _____

Has the firm ever had a contract terminated (either as a prime contractor or sub-contractor), for failure to comply, breach, or default? Yes [] No [] (if yes, please enclose a detailed explanation on separate sheet)

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, please enclose a detailed explanation on separate sheet)

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, please enclose a detailed explanation on separate sheet)

Have you, any officer or partner of your organization, or the organization been involved in any litigation or arbitration against the Palm Beach TPA? Yes [] No [] (if yes, please enclose a detailed explanation on separate sheet)

Authorized Agent Signature: _____

Authorized Agent Printed Name: _____

Date: _____

ATTACHMENT 3 - Amendment Acknowledgment Form

Amendment #:

Date Received:

Amendment #:

Date Received:

Amendment #:

Date Received:

Amendment #:

Date Received:

Amendment #:

Date Received:

Respondent: _____
(Company Name)

Authorized Signature: _____

Print Name: _____

ATTACHMENT 4 - Drug Free Workplace Certification Form

To certify a drug-free workplace program, a business entity 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 agency's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, employee assistance programs, and the penalties that may be imposed upon employees for drug use violations.
- (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in number (1).
- (4) In the statement specified in number (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, 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, Florida Statutes, 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 implementation Section 287.087, Florida Statutes.

THIS CERTIFICATION is submitted by: _____
(Authorized Agent's Name)

_____ of _____
(Title/Position) (Entity Name)

who does hereby certify that said Entity has implemented a drug-free workplace program which meets the requirements of Section 287.087, Florida Statutes, which are identified in numbers (1) through (6) above.

Signature

Date

ATTACHMENT 5 – DBE Bidder's Opportunity List

ANTICIPATED DBE PARTICIPATION STATEMENT

RFS Number:

Contractor's Name:

Contractor's FEIN 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</u>	<u>Amount/</u>
<u>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.

Prime Contractor / Prime Consultant:

Address/Telephone Number:

RFS Number/Advertisement Number:

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on TPA contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies or materials on TPA projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific TPA project. Prime contractors and consultants must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, 7 and 8 for themselves, and their subcontractors and subconsultants.

1. Firm Established: _____
Sub-consultant

1. Federal Tax ID Number: _____ 6. ☐ DBE
2. Firm Name: _____ ☐ Non-DBE
3. Phone: _____
4. Address: _____
7. ☐ Sub-contractor
8. Annual Gross Receipts:
 ☐ Less than \$1 Million
 ☐ Between \$1- \$5 Million
 ☐ Between \$5- \$10 Million
 ☐ Between \$10-\$15Million
 ☐ More than \$15 Million
2. Year Firm Established: _____
Sub-consultant

1. Federal Tax ID Number: _____ 6. ☐ DBE
2. Firm Name: _____ ☐ Non-DBE
3. Phone: _____
4. Address: _____
7. ☐ Sub-contractor
8. Annual Gross Receipts:
 ☐ Less than \$1 Million
 ☐ Between \$1- \$5 Million
 ☐ Between \$5- \$10 Million
 ☐ Between \$10-\$15Million
 ☐ More than \$15 Million
3. Year Firm Established: _____

Sub-consultant

ATTACHMENT 6 – Reference Form

Please list a minimum of three (3) entity references for similar work in each category in which services are offered:

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Contact's Name & Phone #: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Contact's Name & Phone #: _____

Company Name: _____

Address: _____

City, State, & Zip Code: _____

Contact's Name & Phone #: _____

APPENDIX A - Sample Contract

PALM BEACH TPA AGREEMENT NO. FY24-XX

BETWEEN

**PALM BEACH MPO dba THE PALM BEACH TRANSPORTATION PLANNING AGENCY
AND _____ (CONTRACTOR) FOR PRODUCTS/SERVICES**

This Agreement is made as of this ____ day of _____, 2024, 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" or "MPO") 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").

WITNESSETH

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

WHEREAS, the TPA selected CONTRACTOR from the respondents to RFP ____-__ *SERICES/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. "CFR" means Code of Federal Regulations
10. 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 36 of this Agreement.

Section 4. **Services.**

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

Section 5. **Payments.**

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

TPA CY 2024	\$XXX,000.00
TPA CY 2025	\$XXX,000.00
TPA CY 2026*	\$XXX,000.00
TPA CY 2027*	\$XXX,000.00

** If TPA elects at its sole discretion to extend the agreement.*

B. The CONTRACTOR will bill the TPA on a monthly basis for deliverables that have been completed and approved by the TPA. 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 the Hourly Rate Schedule attached as Exhibit "B" (containing the final loaded rate for billing purposes for the CONTRACTOR staff classifications that will perform services under this Agreement), which Exhibit "B" of hereby incorporated into this Agreement and made a part hereof. The parties agree that annual increases to said hourly unloaded rates shall not exceed 3% (three percent), unless increased for good cause established by the CONTRACTOR and accepted by the TPA's Executive Director. The parties agree that any modification to the indirect cost percentage used to derive the final loaded rates shall be for good cause established by the CONTRACTOR and accepted by the TPA's Executive Director. Loaded 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. Invoices received from the CONTRACTOR will be reviewed and approved by the TPA's representative, indicating that services have been rendered in conformity with this Agreement and then will be sent to the TPA Chief Financial Officer ("CFO") for payment. Each invoice shall be accompanied by the corresponding deliverables previously approved by the TPA's representative so that the TPA and any other governmental agency with oversight over expenditures made pursuant to this Agreement may perform proper pre and post-audits of the bills and determine that services have been rendered towards the completion of the Work in conformity with the requirements of this Agreement, the UPWP, 23 CFR 450.314 and Section 339.175, Florida Statutes ("F.S.") Invoices shall cite the contract number and shall contain an original signature of an authorized CONTRACTOR official. Invoices will normally be paid within thirty (30) days following the TPA's representative 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.

D. Prompt Payment of Sub-Contractors; Retainage. This Agreement is subject to the Florida Prompt Payment Act, s. 218.70, Florida Statutes, as amended by this Agreement. In compliance with 49 CFR Section 26.29, the CONTRACTOR as a prime

contractor agrees to pay its sub-contractors, if any, no later than 30 days from receipt of each payment made by the MPO pursuant to this Agreement to the CONTRACTOR. Within not more than thirty (30) days after the subcontractor's work is satisfactorily completed, the CONTRACTOR shall make full and prompt payment to its sub-contractors of any retainage held by the CONTRACTOR for proper completion of the subcontractor's work. A subcontractor's work is "satisfactorily completed" when all the tasks called for in the subcontract have been accomplished according to the standards of the MPO and documented as required by the MPO. When the MPO has made an incremental acceptance of a portion of this Agreement involving the full and complete work of the subcontractor, the work of the subcontractor covered by that acceptance is deemed to be satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause, with the MPO's prior written approval.

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

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

- A. The FDOT has not approved this Agreement;
- B. FDOT determines that any of the services provided or to be provided, including reimbursement of costs or expenses are not "eligible project costs" for which the TPA may be reimbursed;
- C. FDOT shall not approve any requisition or invoice submitted by the TPA to FDOT for reimbursement; or
- D. FDOT shall terminate or cancel its JPA with the TPA or fail to fully fund its obligations thereunder. The TPA's failure to receive funds or the revocation of funding shall constitute a basis for the TPA's termination of this Agreement for convenience.

Section 7. Reports and Ownership of Documents. All written information associated with this Agreement shall be considered a Public Record open to public inspection subject to the provisions of Chapter 119, F.S., unless otherwise made confidential or exempt under Florida law. All documents, papers, letters, drawings, maps, books, tapes, photographs, films,

characteristics, sketches, programs, data-base reports, data processing software, material, websites/web pages, and other data developed under or arising from this Agreement, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, whether public or private but acting on behalf of the CONTRACTOR or the TPA ("Public Record" or "Public Records"), shall be the shared property of the TPA, CONTRACTOR, and any agencies that have provided funding but may be reused by the TPA and 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, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the TPA or at its expense will be kept confidential by 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 Public Records or does not produce or allow access within a reasonable period of time after a request for Public Records has been received. The CONTRACTOR agrees that it shall not initiate or take any action against the TPA, if the TPA terminates this Agreement because of the CONTRACTOR's failure to comply with Florida's Public Records Law. Notwithstanding the foregoing, refusal of the CONTRACTOR to allow public access to such Public Records shall not constitute ground(s) for unilateral cancellation of this Agreement by the TPA, if pursuant to direction of the TPA, the CONTRACTOR withholds access to said Public Record, because it is confidential or exempt from disclosure status pursuant to federal or Florida law. Further, if a request for a Public Record is made to the CONTRACTOR, upon the furnishing of that Public Record to the requestor, the TPA shall be promptly notified and furnished, at no cost, with a similar copy of the Public Record.

E. To the extent required by law, documents prepared pursuant to this Agreement are subject to Florida's Public Record Law. The CONTRACTOR agrees to keep and maintain Public Records in the CONTRACTOR's possession or control in connection with their performance under this Agreement. The CONTRACTOR additionally agrees to comply specifically with the provisions of Section 119.0701, F.S. The CONTRACTOR shall ensure that Public Records that are confidential or exempt, as provided by Florida or federal law, from Public Records disclosure requirements are not disclosed, except as

authorized by law and as approved by the TPA, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the TPA.

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

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

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

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

**TPA Records Custodian
561.725.0800
info@PalmBeachTPA.org
Palm Beach TPA, 301 Datura Street, West Palm Beach, Florida 33401**

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

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

Section 8. Access and Audits.

A. The 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, except 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 Contract 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. FDOT, the State of Florida Chief Financial Officer, Comptroller or Auditor General, the USDOT, Federal Transit Administration ("FTA") or their authorized employees and representatives, and any agency thereof, shall have access to and the 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 the CONTRACTOR's place of business.

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

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

Section 11. FDOT Funded Project.

A. This Agreement is funded in whole or in part with funds received from FDOT by the TPA. The expenditure of such funds is subject to the terms and conditions of any agreement between the TPA and the FDOT providing funding for this Agreement. The 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 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, the 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, 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 TPA's receipt of funds from the FDOT 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, the 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 12. Termination. This Agreement may be terminated by the CONTRACTOR for cause upon thirty (30) days written notice to the TPA's representative. It may also be terminated by the TPA, in whole or in part, for cause, immediately upon written notice to the CONTRACTOR, and without cause and for the convenience of the TPA upon five (5) days written notice to the CONTRACTOR. Notwithstanding the forgoing or anything in this Agreement to the contrary, termination by the TPA shall not become effective until written notice of termination has actually been received by the 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 because 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 of set off 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). 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 Contract Representative.

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

Section 14. Claims/Damages. The TPA and the CONTRACTOR each acknowledge the waiver of sovereign immunity for liability in tort contained in Section 768.28, F.S., the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute

permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or property damage caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The TPA and the CONTRACTOR agree to be responsible for all such claims, and damages, in tort, to the extent and limits provided in Section 768.28, F.S., arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense that the parties may have under such statute, nor as consent to be sued by third parties. The CONTRACTOR agrees that neither the TPA nor FDOT shall be subject to any obligations or liabilities to any third-party contractor, subcontractor or any other entity pertaining to any matter resulting from this Agreement. Notwithstanding the foregoing and to the extent permitted by law, CONTRACTOR agrees to indemnify, defend and hold the TPA harmless from any claim, damage, loss, cost, charge or expense arising out of any act, error, omission or negligent act of the CONTRACTOR, its officers, employees, and agents, in the performance of this Agreement, except that the CONTRACTOR shall not be responsible to the extent of any act, error, omission or negligent act of the TPA or its officers or employees during the performance of this Agreement.

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

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

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

2. Workers' Compensation and Employers Liability. The CONTRACTOR shall maintain Workers' Compensation Insurance, employer's liability insurance and any other insurance as required by Florida Statutes. In addition, the CONTRACTOR must obtain Employers' Liability Insurance with limits of not less than: (i) \$500,000 Bodily Injury by Accident, and (ii) \$500,000 Bodily Injury by Disease, each employee

adjusted periodically as may be required by law from time to time. The Workers' Compensation insurance shall extend to all employees of the CONTRACTOR and, if required by law, shall also extend to volunteers of the CONTRACTOR.

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

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

B. Evidence of Insurance. Prior to the CONTRACTOR receiving its Notice to Proceed from the TPA, satisfactory evidence of the required insurance shall be provided to the TPA. Satisfactory evidence shall be either: (i) a copy of the declaration page certified by the insurer to the TPA designating the TPA as an "additional insured" as appropriate; or (ii) an insurance company certified copy of the actual insurance policy. The TPA, at its sole option, may from time to time request a certified (by the insurer) copy of any or all insurance policies required by this Agreement. The 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 not less than a yearly basis, not later than the effective date of any policy or policy renewal. 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 not less than a yearly basis, or if the CONTRACTOR fails to at all or any times to maintain adequate insurance as required herein, the TPA may, but shall not be obligated to obtain insurance to satisfy this Section 16. The declaration page or policy shall list the "Palm Beach Metropolitan Planning Organization, d/b/a the Palm Beach TPA", as the named "additional insured." The CONTRACTOR's failure to provide evidence of coverage prior to the time the CONTRACTOR is to commence performance shall be grounds for the TPA's cancellation or termination of this Agreement. If the CONTRACTOR elects to self-insure during the term of this Agreement, it shall provide evidence thereof in a form deemed satisfactory to TPA and have received TPA's approval in writing thereof prior to terminating the CONTRACTOR's insurance coverage.

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

evidence), waive or vary these notice requirements, but the TPA Executive Director shall not be obligated to waive or vary these requirements.

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

E. General Insurance Provisions.

1. Prior to issuance of a Notice To Proceed by the TPA and prior to any construction or other Work as part of this Agreement, and at all times during the term of this Agreement, the CONTRACTOR at its sole cost and expense, shall procure and at all times maintain the insurance specified in this Section 16. In addition, the CONTRACTOR shall ensure that their subcontractors, and any other contractors in privity with the CONTRACTOR shall maintain the insurance coverages set forth below. Any attorneys' or paralegals' fees shall be in addition to the coverage or limits set forth herein.
2. All insurance to be obtained will name the TPA, as its respective interests may appear, and will require the insurer to give written notice of any cancellation or change to be sent to the CONTRACTOR and the TPA at least forty-five (45) days prior to cancellation, termination, or material change.
3. Unless otherwise approved by the TPA, in its sole discretion, all insurance shall be Occurrence Form, to the extent that such form of insurance is available on commercially reasonable terms, policies of insurance, shall not have a deductible of more than \$10,000 unless approved in writing by the TPA Contract Representative, shall be with an insurance company licensed by the State of Florida Insurance Commissioner, or said Commissioner's successor, to issue the policy presented, issued by a company having an A.M. Best's Rating Guide financial strength rating of A or better and a financial size category of VII or better. In the event that A.M. Best's Rating Guide is discontinued, the TPA and the CONTRACTOR shall amend this Agreement to provide a successor rating service and ratings, which in the TPA's reasonable judgment are similar to what is required by this Agreement. "Claims made" insurance shall not be acceptable insurance under this Agreement.
4. The CONTRACTOR, and its general contractor, any other contractors in privity with either the CONTRACTOR shall be solely responsible for all deductibles and retentions contained in their respective policies.
5. The TPA will be included as an "Additional Insured" on the Commercial General Liability, any Umbrella Liability, and Builders' Risk policies. The CONTRACTOR's insurance policies will be primary over any and all insurance available to the TPA, whether purchased or not, and must be non-contributory.
6. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms, as revised from time to time, issued by the Insurance Services Office ("ISO") or the National Council on Compensation Insurance ("NCCI"). If ISO or NCCI issues new policy forms during the policy term of the required insurance, the CONTRACTOR will not be required to comply with the new policy forms until the expiration date of the insurance policy.

affected by the change.

7. The CONTRACTOR will ensure that each insurance policy obtained by it or by any sub-contractor on the Work provides that the insurance company waives all right of recovery by way of subrogation against the TPA in connection with any damage covered by any policy.

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

G. Adequacy of Insurance Coverage.

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

2. The CONTRACTOR has the right to contest the request for a change in insurance but must be commercially reasonable.

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

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

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

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 the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, licensed, authorized or permitted under state and

local law to perform such services.

Section 17. Public Entity Crimes. In accordance with Sections 287.132 and 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, 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 CONTRACTOR facility as identified in Palm Beach County Resolution No. R-2003-1274. 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 the 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 the FDOT that the U.S. Department of Homeland Security's E-Verify System (System) will be used to verify the employment eligibility of CONTRACTOR's employees and the employees of the CONTRACTOR's subcontractors, performing Work pursuant to this Agreement. In addition, Florida law will effective January 1, 2021, require that the E-verify system be used by the CONTRACTOR. See s. 448.095, F.S. Accordingly, the CONTRACTOR agrees that it will utilize the System, in accordance with the law and the regulations applicable to the System, to verify the employment eligibility of its employees and that it will require any subcontractor used in the performance of the Work to verify the employment eligibility of its employees. The 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 the FDOT, and that such funds may be used to pay 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 material violation of the Immigration and Nationality Act and this Agreement. 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 the FDOT.

Section 21. Title VI – Nondiscrimination Policy Statement.

The Palm Beach Transportation Planning Agency (TPA) values diversity and both welcomes and actively seeks input from all interested parties, regardless of cultural identity, background or income level. Moreover, the TPA does not tolerate discrimination in any of its programs, services or activities. The TPA will not exclude participation in, deny the benefits of, or discriminate against anyone on the grounds of race, color, national origin, sex, age, disability, religion, income, or family status. Additionally, the TPA extends these same assurances to any protected class as recognized by any of the local governments within its service area. The TPA will actively work to ensure inclusion of everyone in our community so that our programs, services and activities represent the diversity we enjoy.

The purpose of the TPA Title VI program is to establish and implement procedures that comply with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, the Americans with Disabilities Act of 1990 (ADA), as well as other related federal and state statutes and regulations. These procedures have been adopted to conform to Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regulations, as well to Florida Department of Transportation (FDOT) guidelines.

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 Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. DOT 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.

B. Nondiscrimination: The CONTRACTOR, with regard to the work performed during the Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5, of the Regulations, including employment practices when the 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 family 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 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 Federal Motor Carrier Safety Administration as appropriate and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, the FDOT shall impose such contract sanctions as it or the FHWA, FTA, the FAA, and/or the Federal Motor Carrier Safety Administration 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 excepted 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, the FAA, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the 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. Accessibility: The CONTRACTOR will abide by Title II and Title III of the Americans with Disabilities Act of 1990. Where CONTRACTOR work items include assessing or planning pedestrian rights of way, it will follow the FDOT Design Manual or Florida GreenBook, as applicable. 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 Article to the TPA.
- J. 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 Estate 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; (prohibit 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 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on age, creed, color, national origin, or sex); The Civil rights Restoration Act of 1987 (P.L. 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, be 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 status (49 U.S.C. §47123)(prohibits discrimination of the basis 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 and low-income populations by discouraging programs, policies, and 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 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.*).

- K. Required Activities for Compliance. Pursuant to Section 9 of the U.S. DOT Order 1050.2A, the TPA assures the Florida Department of Transportation (FDOT) that no person shall 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 1992 and other nondiscrimination authorities be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity. The TPA and the CONTRACTOR further assure FDOT that they will undertake the following with respect to programs and activities:
 1. Designate a Title VI Liaison that has a responsible position within the organization and access to the Recipient’s Chief Executive Officer;
 2. Issue a policy statement signed by the Chief Executive Officer, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated through the Recipient’s organization and to the general public. Such information shall be published where appropriate in languages other than English;
 3. Insertion of the clauses set forth in Section 21. A.- E. and J. of this Agreement;

4. Development a complaint process and attempt to resolve complaints of discrimination against sub-recipients. Complaints against the Recipient shall immediately be forwarded to the FDOT District Title VI Coordinator;
5. Participate in training offered on Title VI and other nondiscrimination requirements;
6. If reviewed by FDOT or USDOT, take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed ninety (90) calendar days; and
7. Have a process to collect racial and ethnic data on persons impacted by your agency's programs.

This assurance is given in consideration of and for the purpose of obtaining any and all federal funds, grants, loans, contracts, properties, discounts, or other federal financial assistance under all programs and activities and is binding. The TPA's signatory is authorized to sign this assurance on behalf of the Recipient.

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

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

E. The 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 the 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 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, which consent may be withheld or refused for any reason or no reason. The parties agree that additional consideration incorporated into the payment schedule of this Agreement has been made for this provision.

Section 25. Contingent Fees. The 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. This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. If any funds other than federal appropriated funds have been paid to the 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 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 the FTA. Additional terms and conditions are set forth in Exhibit "C" attached hereto and made applicable to the CONTRACTOR and a part of this Agreement by this reference. 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 the TPA shall have any rights in this Agreement or any remedy against either the CONTRACTOR or the TPA for a violation of any of the terms and conditions set forth herein or pertaining in any way to the services to be rendered by the 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 the 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 certified U.S. Mail, return receipt requested, postage prepaid, and addressed to the party to receive such notice, invoice, or communication, as set forth below; or

B. By nationally recognized overnight courier service (*e.g.*, FedEx, UPS, *etc.*) prepaid and addressed to the party to receive such notice, invoice, or communication, as set forth below; or

C. By hand delivery to the office of the party to whom such notice, invoice, or communication is being given. All notices, invoices, or communications shall be addressed to a party at the address given below or such other address as may hereafter be designated by notice in writing.

If to the TPA:

Executive Director

Palm Beach Transportation Planning Agency
301 Datura Street
West Palm Beach, FL 33401

If to the CONTRACTOR: CONTRACTOR contact]

[CONTRACTOR contact]
[CONTRACTOR address]

The foregoing individuals shall also be known in this Agreement as the agency's "Contract Representative."

D. A notice or communication, under this Agreement, from one party to another party shall be sufficiently given or delivered if dispatched to the party's individual listed in Section 36.C. by hand delivery, or by nationally recognized overnight courier (*i.e.* – Federal Express, United Parcel Services, *etc.*) providing receipts, or by U.S. certified mail, postage prepaid, return receipt requested.

E. Notices; Addresses; Time. Either party may unilaterally change its addressee or address, by giving written notice thereof to the other party pursuant to this Section 36., but the change is not effective until the change notice is actually received by the other party.

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

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

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

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

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

It the policy of the TPA that disadvantaged businesses, as defined by 49 Code of Federal Regulations, Part 26, shall have an opportunity to participate in the performance of MPO/TPA contracts in a nondiscriminatory environment. The objectives of the Disadvantaged Business Enterprise Program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards, help removed barriers to participation, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility, and ensure

narrow tailoring of the program.

The TPA, the CONTRACTOR, and the TPA's other contractors, shall take all necessary and reasonable steps to ensure disadvantaged businesses have an opportunity to compete for and perform the contract work of the TPA, in a non-discriminatory environment.

The TPA requires that the CONTRACTOR, and the TPA's other contractors, shall not discriminate on the basis of race, color, national origin, and sex, in the award and performance of this contract. The policy covers in part the applicable federal regulations and the applicable statutory references contained therein for the Disadvantaged Business Enterprise Program Plan, Chapters 337 and 339, Florida Statutes, and Rule Chapter 14-78, Florida Administrative Code.

- B. Subcontracting Required Statement. Under 49 CFR 26.13(b), each subcontractor agreement signed by the CONTRACTOR must include the following assurance:

"The CONTRACTOR, 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 the applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy 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. The CONTRACTOR shall include the statements set forth in paragraphs A. and B. above in each subcontract or sub-consultant contract it lets.

- D. Race Neutral Achievement. In accordance with 49 CFR Part 26.21, and the FDOT DBE Program Plan, DBE participation on FHWA-assisted contracts must be achieved through race-neutral methods. The TPA is required to implement the FDOT DBE Program on any contracts with FHWA funds. FDOT operates a 100% race and gender-neutral DBE program. This means that FDOT's current overall goal of 10.65% may be achieved without the use of contract DBE goals.

1. The TPA will not require use of DBEs by the CONTRACTOR as a matter of contract, nor will it seek sanctions for failing to use DBEs.
2. The TPA will not use bidder DBE commitments to evaluate bidder proposals or to select the winning CONTRACTOR.
3. The TPA will not employ local or regional preferences in the evaluation or award of the contract.

4. The TPA is precluded from using any business program besides the FDOT DBE program. County or municipal small, minority or women's programs will not be used in award, evaluation or delivery of the contract.
- E. Eligible DBE Participants. For the purpose of this Agreement, the TPA will accept only DBE's who are:
1. Certified, at the time of bid opening or proposal evaluation, by the FDOT DBE & Small Business Development Program at 850-414-4745; or
 2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or a TPA whose DBE certification process has received FTA approval; or
 3. Certified by another TPA approved by the FDOT.
- F. Availability of Supportive Services. The TPA and FDOT are committed to sustainability and growth of DBEs and other small businesses. The TPA urges the selected CONTRACTOR to make considered efforts to identify and use these firms. For assistance with locating DBEs, the CONTRACTOR may access the Florida DBE Directory. Further assistance may be obtained by contacting FDOT DBE supportive services provider at <https://www.fdotdbesupportservices.com/>, 866-378-6653. Supportive services are offered free of charge to DBEs and contractors/consultants.
- G. DBE Reporting Requirements.
1. All bidders must provide Bidders Opportunity List information in the FDOT Equal Opportunity Compliance (EOC) System. Instructions for doing so are located on the FDOT website at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content/equalopportunity/eoc-help/bidders-opportunity-list/report-bidders-list.pdf?sfvrsn=dde4e3b5_0
 2. The selected CONTRACTOR must use the FDOT EOC system to report the use (or lack thereof) of DBEs. The CONTRACTOR must enter both its DBE commitments and subcontractor list in EOC. Instructions for doing so are located on the FDOT website at <https://www.fdot.gov/equalopportunity/eoc.shtm>.
 3. The selected CONTRACTOR must access FDOT at least every thirty (30) days to update commitments and enter EOC payments. Instructions for doing so are located on the FDOT website at <https://www.fdot.gov/equalopportunity/eoc.shtm>.
- 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.
- H. 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. 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.

- I. 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.
- J. 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.
- K. 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.
- L. 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.

- M. Cooperation with TPA Oversight: The TPA is responsible for conducting and documenting oversight of the RFP, bidding process, award and delivery of the CONTRACTOR contract for compliance with civil rights authorities. This includes but is not limited to conducting Commercially Useful Function (CUF) reviews on all DBEs used by the selected CONTRACTOR (or the CONTRACTOR itself, if a DBE), and by reviewing payments and retainage to ensure subcontractors are paid promptly as defined in Section 5 D. The selected contractor will cooperate fully with TPA oversight efforts, as well as those instituted by FDOT and/or FHWA.
- N. 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.
- O. Sanctions for Noncompliance: The selected contractor is responsible for compliance with this section, both for itself and its subcontractor, if any. Failure to comply with any provision of this section is a material breach of contract and could result in sanctions taken by the MPO or the primary recipient, FDOT, including but not limited to termination of the contract; withholding progress or final payments; assessing liquidated damages; disqualifying the CONTRACTOR from future work; or referral of noncompliance determination(s) to the FDOT or USDOT Offices of Inspector General, if appropriate.
- P. 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. 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 TPA'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 Work Order's Timeline or Schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the TPA's rights to change, terminate, or stop any or all of the Work at any time.

Section 43. **Arrears** The 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.

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IN WITNESS WHEREOF, the Palm Beach Transportation Planning Agency and the CONTRACTOR have hereunto set their hands to this Agreement on this ____ day of [month], 20__.

[CONTRACTOR NAME]

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

By: _____

By: _____

Title: _____

Mayor Chelsea Reed, Chair

Date: _____

Date: _____

ATTEST FOR [CONTRACTOR name]:

ATTEST FOR TPA:

Print Name: _____

Ruth Del Pino, TPA Agency Clerk

APPROVED AS TO TERMS AND
CONDITIONS

Valerie Neilson
TPA Executive Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Paul R. Gougelman, Esq.
TPA General Counsel

Exhibit A

SCOPE OF SERVICES

Exhibit B

[INSERT CONTRACTOR PRICE OR HOURLY RATE SCHEDULE]

Exhibit C

FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACT CLAUSES

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

B. Program Fraud and False or Fraudulent Statements. CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR agrees to include the above stated provisions in each subcontract financed in whole or in part with federal assistance provided by the FTA. CONTRACTOR shall not modify the above stated provisions except to identify the subcontractor who will be subject to the provision.

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

D. Incorporation of Federal Transit Administration (FTA) Terms. This Agreement shall be

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

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

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

The TPA does not discriminate on the basis of race, color, national origin, sex, age, religion, disability and family status. Those with questions or concerns about nondiscrimination, those requiring special assistance under the Americans with Disabilities Act (ADA), or those requiring language assistance (free of charge) should contact Melissa Murray at (561) 725-0813 or Info@PalmBeachTPA.org.

2. Equal Employment Opportunity:

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

the future affect construction activities undertaken in the course of the project. 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, 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, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

(c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, CONTRACTOR 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, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

F. Disadvantaged Business Enterprises (DBE). See Section 38 of the Agreement.

Q. 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, CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR further agrees to include a provision requiring such

compliance in its subcontracts or any lower tier covered transaction it enters into.

- R. Clean Air. The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, et seq. CONTRACTOR agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. CONTRACTOR further agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.
- S. Clean Water. If this Agreement is valued at \$100,000 or more, CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. CONTRACTOR agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.
- T. Energy Conservation. CONTRACTOR 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.
- U. Seat Belts. CONTRACTOR is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate CONTRACTOR-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, CONTRACTOR 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.