

PALM BEACH TPA AGREEMENT NO. FY25-03A

**BETWEEN
PALM BEACH MPO DBA THE PALM BEACH TRANSPORTATION PLANNING AGENCY
AND KITTELSON & ASSOCIATES FOR
GENERAL PLANNING CONSULTANT SERVICES**

This Agreement is made as of this 26 day of June 2025, 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 **Kittelson & Associates Inc.**, authorized to do business in the State of Florida and whose principal place of business is located at 225 E Robinson Street, Suite 355 Orlando, FL 32801. (hereinafter referred to as the "CONSULTANT").

WITNESSETH

WHEREAS, the CONSULTANT was selected to provide the Services via RFP No. FY25-03 in compliance with the TPA Procurement Policy.

WHEREAS, the TPA has requested the services of the CONSULTANT to assist the TPA in conducting transportation planning tasks that support the TPA's mission and advance the TPA's Vision, as more specifically described in the Scope of Services (also referred to as the "Scope" or "Work") attached hereto as Exhibit "A" and incorporated into and made a part of this Agreement; and

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

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 or 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.

11. "UPWP" means the TPA's adopted "Unified Planning Work Program", as amended from time to time.

12. "JPA" means the Joint Planning Agreement, as amended from time to time.

Section 2. **Representatives.** TPA's representative during the performance of this Agreement is the Executive Director of the TPA, and CONSULTANTS's representative during the performance of this Agreement is **John (JP) Paul Weesner** 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 CONSULTANT's representative shall not affect CONSULTANT's responsibility for the provision of the Services under this Agreement.

Section 3. **Term.** This Agreement shall take effect on July 1, 2025, and shall remain in full force and effect for a period of 3 years (36) months, expiring June 30, 2028. 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 CONSULTANT 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 CONSULTANT to render the Services set forth in Exhibit "A", attached hereto and by this reference incorporated herein. The Services are governed by this Agreement and may only be changed by written instrument signed by both parties.

B. The CONSULTANT 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 CONSULTANT to violate any Federal, State, or local law, Executive Order, ordinance, or regulation, CONSULTANT 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 maximum amount to be paid by the TPA to the CONSULTANT under this Agreement is One Million One-Hundred Twenty-Five Thousand Dollars (\$1,125,000) (Dollars in US Currency), including all out-of-pocket or reimbursable expenses. If the TPA exercises the option to extend the agreement, the maximum amount increases by Three Hundred and Seventy-Five Thousand (\$375,000) for each year extended. The TPA anticipates that funds will be allocated and distributed for each year of the Agreement as follows:

FY 2026	\$375,000.00
FY 2027	\$375,000.00
FY 2028	\$375,000.00
FY 2029*	\$375,000.00
FY 2030*	\$375,000.00

*Only applicable if the TPA exercises the option to extend the agreement.

If TPA elects at its sole discretion to extend the agreement

B. The CONSULTANT will bill the TPA on a monthly basis for deliverables that have been completed and approved by the TPA. The CONSULTANT'S charges for all work provided under any Work Order issued by the TPA shall not exceed the hourly rates set forth in the Hourly Rate Schedule attached as Exhibit "B" (containing the final loaded rate for billing purposes for the CONSULTANT staff classifications that will perform services under this Agreement), which Exhibit "B" is hereby incorporated into this Agreement and made a part hereof. The parties agree that annual increases to said hourly unloaded rates shall not

exceed 3% (three percent), unless increased for good cause established by the CONSULTANT and accepted by the TPA's Executive Director. The parties agree that any modification to the indirect cost percentage used to derive the final loaded rates shall be for good cause established by the CONSULTANT and accepted by the TPA's Executive Director. Loaded hourly rates for services to be performed by personnel not directly employed by the CONSULTANT shall be established within the Work Order for an individual task. Each billing shall not exceed the amount established by the parties for the work or task(s) performed. The total cost of the performance of all of the tasks described in the Scope, as further refined in the Work Orders issued, inclusive of all out-of-pocket or reimbursable expenses, shall be equal to or less than the not to exceed contract amount set forth above.

- C. Invoices received from the CONSULTANT will be reviewed and approved by the TPA's representative, indicating that services have been rendered in conformity with this Agreement and then will be sent to the TPA Finance Department for payment. Each invoice shall be accompanied by the corresponding deliverables previously approved by the TPA's representative so that the TPA and any other governmental agency with oversight over expenditures made pursuant to this Agreement may perform proper pre- and post-audits of the bills and determine that services have been rendered towards the completion of the Work in conformity with the requirements of this Agreement, the UPWP, 23 CFR 450.314 and Section 339.175, Florida Statutes ("F.S."). Invoices shall cite the contract number and shall contain an original signature of an authorized CONSULTANT official. Invoices will normally be paid within thirty (30) days following the TPA's representative approval. Payments will be remitted to the CONSULTANT at the address set forth in Section 36 of this Agreement or such other address as is designated in writing by the CONSULTANT to the TPA.
- D. Prompt Payment of Subconsultants; 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 CONSULTANT as a prime CONSULTANT agrees to pay its subconsultants, if any, no later than 30 days from receipt of each payment made by the MPO pursuant to this Agreement to the CONSULTANT. Within not more than thirty (30) days after the subconsultant's work is satisfactorily completed, the CONSULTANT shall make full and prompt payment to its subconsultant of any retainage held by the CONSULTANT for proper completion of the subconsultant's work. A subconsultant'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 subconsultant, the work of the subconsultant 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 CONSULTANT will clearly state "final invoice" on its last and final billing. This certifies that all deliverables have been properly completed, provided to, and approved by the TPA and all charges and costs have been invoiced to the TPA. Since this account will thereupon be closed, any and all other future charges, if not properly included on this final invoice, are waived by the CONSULTANT. All invoices must be submitted within thirty (30) 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, material, websites/web pages, and other data developed under or arising from this Agreement, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, whether public or private but acting on behalf of the CONSULTANT or the TPA ("Public Record" or "Public Records"), shall be the shared property of the TPA, CONSULTANT, and any agencies that have provided funding but may be reused by the TPA and the CONSULTANT.

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

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

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

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

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

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

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

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

I. Notwithstanding anything contained herein, the CONSULTANT further agrees to:

1. Keep and maintain public records that ordinarily and necessarily would be required by the TPA in order to perform the Services;
2. Provide the public with access to public records on the same terms and conditions that the TPA would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law;
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
4. Meet all requirements for retaining public records and transfer, at no cost to the TPA, all public records in possession of the CONSULTANT upon termination of the Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the TPA in a format that is compatible with the information technology system of the TPA, as determined by the TPA.

Section 119.0701(2)(a), Florida Statutes, Disclosure.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONSULTANT'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 CONSULTANT notice as provided in Section 36. of this Agreement.

J. This Section 7. shall survive the termination of this Agreement.

Section 8. Access and Audits.

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

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

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

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 U.S. DOT, or any agency thereof, to provide any certifications, documents or reports related to or produce as a result of this Agreement, the CONSULTANT will cooperate and assist the TPA with the preparation of such at no cost to the TPA or any agency of the Federal or State government.

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

Section 11. FDOT Funded Project.

A. This Agreement is funded in whole or in part with funds received from FDOT by the TPA. The expenditure of such funds is subject to the terms and conditions of any agreement between the TPA and the FDOT providing funding for this Agreement. The CONSULTANT shall not perform any act, fail to perform any act or refuse to comply with TPA requests which would cause the TPA to be in violation of any term or condition of its JPA with FDOT or cause FDOT to refuse to approve a requisition or invoice for payment or reimbursement submitted by the TPA. The CONSULTANT will immediately remedy any deficiency or violation found by the TPA upon notice of such from the TPA, or alternatively, and in addition to any other right to terminate this Agreement, the CONSULTANT may terminate this Agreement by providing written notice to the TPA. In the event of termination, the CONSULTANT will be paid by the TPA for services satisfactorily rendered through the effective date of termination; provided, that, no circumstance(s) exists which would limit or restrict the TPA's obligation to pay, as set forth in this Agreement, including but not limited to those described in Section 6. The TPA's obligation to pay the CONSULTANT is contingent upon the TPA's receipt of funds from the FDOT for the purposes of this Agreement.

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

Section 12. Termination. This Agreement may be terminated by the CONSULTANT for cause upon thirty (30) days written notice to the TPA's representative. It may also be terminated by the TPA, in whole or in part, for cause, immediately upon written notice to the CONSULTANT and without cause and for the convenience of the TPA upon five (5) days written notice to the CONSULTANT. Notwithstanding the forgoing or anything in this Agreement to the contrary, termination by the TPA shall not become effective until written notice of termination has actually been received by the CONSULTANT at its address set forth in this Agreement or other address designated in writing by the CONSULTANT in a notice to the TPA. The CONSULTANT shall not be entitled to any anticipated lost profits on uncompleted Work or other damages because of the TPA's termination of this Agreement for convenience. The CONSULTANT shall be paid for services rendered to the TPA's satisfaction through the date of termination except, if the CONSULTANT is in default, the TPA shall have a right of set off against the amount that would otherwise be payable to the CONSULTANT to compensate the TPA for any actual damages suffered because of the CONSULTANT default(s). After receipt of a Termination Notice from the TPA, except as otherwise directed by the TPA, the CONSULTANT shall:

A. Stop work on the date and to the extent specified.

B. Incur no further costs or place orders for materials, services, or facilities, except as may be necessary to complete that portion of the Work not terminated; provided, that the CONSULTANT has obtained the TPA's agreement that such must be completed.

C. Terminate and settle all orders and subcontracts relating to the performance of the terminated Work.

D. Transfer all Work in process, completed Work, and other materials related to the terminated Work to the TPA.

E. Continue and complete all parts of the Work that have not been terminated and prepare all necessary reports and documents required under the terms of this Agreement, up to the date of termination, as requested by the TPA's Contract Representative.

Section 13. Indemnification. The CONSULTANT shall indemnify and hold the TPA, and their respective employees, and elected officers harmless from and against liability, loss, cost, and damages, including, but not limited to, reasonable attorney's fees, to the extent caused by the CONSULTANT's negligent, reckless, intentional or wrongful performance of the terms of this Agreement of the CONSULTANT or any other persons employed or utilized by the CONSULTANT.

Indemnification of the TPA shall be provided for the CONSULTANT's negligence or wrongful, reckless or intentional acts or omissions, as well as that of its subcontractors, suppliers, or other individuals under its control. The TPA shall notify the CONSULTANT of any actual or prospective claim for which indemnification may be sought upon actual knowledge of that claim; provided, however, that failure to give notice shall not relieve the CONSULTANT of its obligations under this indemnification clause except to the extent that the CONSULTANT is materially prejudiced by that failure. In the event that any third party claim is made, the CONSULTANT shall have the right to undertake and control the defense of such action; provided, that the TPA may undertake and control that defense in the event of a material failure of the CONSULTANT to undertake and control it, without prejudice to any right under this indemnification clause. This indemnification clause shall survive the termination of and term of this Agreement. CONSULTANT has no obligation to pay any amount that exceeds the proportionate share of CONSULTANT'S finally determined percentage of liability as determined by a court of competent jurisdiction. CONSULTANT expressly agrees that it will not claim, and waives any claim, that this indemnification violates Florida law. Nothing contained in the foregoing indemnification shall be construed as a

waiver of any immunity or limitation of liability the TPA may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes

Section 14. Claims/Damages. The TPA and the CONSULTANT each acknowledge the waiver of sovereign immunity for liability in tort contained in Section 768.28, F.S., the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or property damage caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The TPA agrees to be responsible for all such judicially determined damages, in tort, to the extent and limits provided in Section 768.28, F.S., arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense that the parties may have under such statute, nor as consent to be sued by third parties. The CONSULTANT agrees that neither the TPA nor FDOT shall be subject to any obligations or liabilities to any third-party CONSULTANT, subconsultant or any other entity pertaining to any matter resulting from this Agreement.

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

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

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

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

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

B. Evidence of Insurance. Prior to the CONSULTANT receiving its Notice to Proceed from the TPA,

satisfactory evidence of the required insurance shall be provided to the TPA. Satisfactory evidence shall be either: (i) a copy of the declaration page certified by the insurer to the TPA designating the TPA as an "additional insured" as appropriate; or (ii) an insurance company certified copy of the actual insurance policy. The TPA, at its sole option, may from time to time request a certified (by the insurer) copy of any or all insurance policies required by this Agreement. The CONSULTANT, in the manner provided in this Agreement for giving notice, shall forward to the TPA any of the instruments required hereunder within thirty (30) days of request by the TPA or, on not less than a yearly basis, not later than the effective date of any policy or policy renewal. If the CONSULTANT does not furnish proof of insurance as set forth in this section within thirty (30) days of the receipt of a request therefore from the TPA or on not less than a yearly basis, or if the CONSULTANT fails to at all or any times to maintain adequate insurance as required herein, the TPA may, but shall not be obligated to obtain insurance to satisfy this Section 16. The declaration page or policy shall list the "Palm Beach Metropolitan Planning Organization, d/b/a the Palm Beach TPA", as the named "additional insured." The CONSULTANT's failure to provide evidence of coverage prior to the time the CONSULTANT is to commence performance shall be grounds for the TPA's cancellation or termination of this Agreement.

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

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

E. General Insurance Provisions.

1. Prior to issuance of a Notice to Proceed by the TPA and prior to any construction or other Work as part of this Agreement, and at all times during the term of this Agreement, the CONSULTANT at its sole cost and expense, shall procure and at all times maintain the insurance specified in this Section 15. In addition, the CONSULTANT shall ensure that their subconsultants, and any other CONSULTANTS in privity with the CONSULTANT shall maintain the insurance coverages set forth below. Any attorneys' or paralegals' fees shall be in addition to the coverage or limits set forth herein.

2. All insurance to be obtained will name the TPA, as its respective interests may appear, and will require the insurer to give written notice of any cancellation or change to be sent to the CONSULTANT and the TPA at least thirty (30) days prior to cancellation, termination, or material change.

3. Unless otherwise approved by the TPA, in its sole discretion, all insurance shall be Occurrence Form, to the extent that such form of insurance is available on commercially reasonable terms, policies of insurance, shall not have a deductible of more than \$10,000 unless approved in writing by the TPA Contract Representative, shall be with an insurance company licensed by the State of Florida Insurance Commissioner, or said Commissioner's successor, to issue the policy presented, issued by a company having an A.M. Best's Rating Guide financial strength rating of A or better and a financial size category of VII or better. In the event that A.M. Best's Rating Guide is discontinued, the TPA and the CONSULTANT shall amend this Agreement to provide a successor rating service and ratings, which in the TPA's reasonable judgment are similar to what is required by this Agreement. "Claims made" insurance shall not be acceptable insurance under this Agreement.

4. The CONSULTANT, and its general CONSULTANT, any other CONSULTANTS in privity with either the CONSULTANT shall be solely responsible for all deductibles and retentions contained in their

respective policies.

5. The TPA will be included as an "Additional Insured" on the Commercial General Liability and any Umbrella Liability policies. The CONSULTANT's insurance policies will be primary over any and all insurance available to the TPA, whether purchased or not, and must be non-contributory.

6. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms, as revised from time to time, issued by the Insurance Services Office ("ISO") or the National Council on Compensation Insurance ("NCCI"). If ISO or NCCI issues new policy forms during the policy term of the required insurance, the CONSULTANT will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.

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

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

G. Adequacy of Insurance Coverage.

1. The adequacy of the insurance coverage required by this section 15 may be reviewed periodically by the TPA in its reasonable discretion. The TPA may request a change in the insurance coverage, if it is commercially reasonable; provided, that such coverage is available at commercially reasonable rates.

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

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

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

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

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

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

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

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

Section 19. **Reserved.**

Section 20. **E-Verify.**

A. The TPA has agreements with FDOT which require the TPA to agree and assure the FDOT that the U.S. Department of Homeland Security's E-Verify System (System) will be used to verify the employment eligibility of CONSULTANT's employees and the employees of the CONSULTANT's subconsultants, performing Work pursuant to this Agreement. In addition, Florida law requires that the E-verify system be used by the CONSULTANT. See s. 448.095, F.S. Accordingly, the CONSULTANT agrees that it will utilize the System, in accordance with the law and the regulations applicable to the System, to verify the employment eligibility of its employees and that it will require any subconsultant used in the performance of the Work to verify the employment eligibility of its employees. The CONSULTANT shall provide evidence that it and its subconsultants have so verified the employment eligibility of all employees to the TPA and FDOT on forms and in the manner required by the TPA.

B. The CONSULTANT acknowledges that the TPA has received and will seek funds from the FDOT, and that such funds may be used to pay CONSULTANT for the services it provides under this Agreement. The CONSULTANT further acknowledges that FDOT has advised recipients of FDOT funds that it will consider a CONSULTANT's employment of unauthorized aliens to be a material violation of the Immigration and Nationality Act and this Agreement. The CONSULTANT affirms to the TPA that it will not employ unauthorized aliens or take any other act which may cause the TPA to be in violation of any term or condition of any agreement between the TPA and the FDOT.

Section 21. **Title VI – Nondiscrimination Policy Statement.**

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 CONSULTANT agrees for itself, its assignees and successors in interest as follows:

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

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the 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 CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT 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 CONSULTANT'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 CONSULTANT until the CONSULTANT complies; and/or
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (E) of this section in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the 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 CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the FDOT to enter into such litigation to protect the interests of the FDOT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

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

H. Accessibility: The CONSULTANT will abide by Title II and Title III of the Americans with Disabilities Act of 1990. Where CONSULTANT work items include assessing or planning pedestrian rights of way, it will follow the FDOT Design Manual or Florida GreenBook, as applicable. The CONSULTANT does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act (42. U.S.C. 12102, *et. seq.*) and all applicable implementing regulations of the U.S.DOT and its agencies.

I. The CONSULTANT shall report all grievances or complaints pertaining to its actions and obligations

under this Article to the TPA.

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 CONSULTANTS, 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.

Section 22. **Conflict of Interest.**

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

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

of interest by the CONSULTANT, then the CONSULTANT shall immediately act to resolve or remedy the conflict. If the CONSULTANT shall fail to do so, the TPA may terminate this Agreement for cause.

C. The CONSULTANT shall not enter into any contract, subcontract, or arrangement in connection with the Work (also referred to as "Project," "Scope," or "Scope of Services") or any property included or planned to be included in the Work, with any officer, director or employee of the TPA or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's director's or employee's spouse or child, or any combination of them, has a material interest.

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

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

F. The CONSULTANT agrees for itself and shall insert in all contracts entered into in connection with the Work or Project or any property included or planned to be included in the Work or Project, and shall require its CONSULTANTS 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 CONSULTANT Relationship. The CONSULTANT is and shall be, in the performance of the Work, services and activities under this Agreement, an Independent CONSULTANT and not an employee, agent, or servant of the TPA. All persons engaged in any of the Work or services performed pursuant to this Agreement shall, at all times and in all places, be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects, the CONSULTANT relationship and the relationship of its employees to the TPA shall be that of an Independent CONSULTANT and not as employees or agents of the TPA. The CONSULTANT does not have the power or authority to bind the TPA in any promise, agreement, or representation.

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

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

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

A. The CONSULTANT agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the TPA, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative

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

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

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

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

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

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

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

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

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

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 CONSULTANT 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:

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

If to the CONSULTANT:

Kittelson & Associates, Inc.
ATTN: John Paul Weesner,
225 E Robinson Street, Suite 355
Orlando, FL 32801

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 CONSULTANT or the TPA receives any notice from a

governmental body or governmental officer that pertains to this Agreement or performance pursuant hereto, or receives any notice of litigation or threatened litigation affecting any of the aforementioned subjects, then the receiving party shall promptly send it (or a copy of it) to the other party to this Agreement.

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

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

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

It is 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 CONSULTANT, and the TPA's other CONSULTANTS, 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 CONSULTANT, and the TPA's other CONSULTANTS, 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 subconsultant agreement signed by the CONSULTANT must include the following assurance:

"The CONSULTANT, sub recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this 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 CONSULTANT from future contracts as non-responsible.

C. The CONSULTANT 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. Therefore, no specific DBE contract goal may be applied to this agreement.

1. 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.
2. The TPA will not use bidder DBE commitments to evaluate bidder proposals or to select the winning CONSULTANT.
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. Certified DBEs are 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. More information is available by visiting: <https://www.fdot.gov/equalopportunity/dbecertification.shtm> or calling 850-414-4750.

F. Only those firms certified by FDOT or other participants in Florida's Unified Certification Program at the time of proposal opening shall be reported. It is the responsibility of the respondent to confirm and document the certification of any proposed DBE.

G. 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 CONSULTANT to make considered efforts to identify and use these firms. For assistance with locating DBEs, the CONSULTANT 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 consultants.

G. DBE Reporting Requirements.

The CONSULTANT completed and submitted the DBE Bidder Opportunity List form as part of the RFP submission package. The DBE Bidder Opportunity List form is included as attachment A of this agreement.

The selected consultant is required to complete a Commitments and Payments report. This report must indicate whether the consultant will utilize Disadvantaged Business Enterprises (DBEs) for the awarded contract. The Commitments and Payments report shall be submitted with each payment request.

- **No DBEs:** If the consultant indicates no DBE participation, they may proceed with submitting the Commitments and Payments report.
- **DBE Participation:** If the consultant indicates DBE participation, they must provide a detailed list of DBE commitments and subcontractors within the Commitments and Payments report.

The consultant may be required to use the FDOT EOC system to report the use (or lack thereof) of DBEs. The consultant may be required to enter both its DBE commitments and subcontractor list in EOC. Once using the FDOT EOC System, the selected consultant 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>. Assistance or information about the FDOT EOC System can be found by contacting the system administrator at eoohelp@dot.state.fl.us.

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 CONSULTANT will only be permitted to replace a certified DBE subconsultant who is unwilling or unable to perform. If a subconsultant fails to perform or make progress as required by this Agreement and it is necessary to replace the subconsultant to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subconsultant by TPA. The CONSULTANT shall notify the TPA immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation of such. The CONSULTANT must obtain the TPA's representative's prior approval to substitute a DBE. The CONSULTANT shall provide copies of new or amended subcontracts, or documentation of good faith efforts, as required by the TPA. If the CONSULTANT fails or refuses to comply in the time specified, the TPA may issue an order stopping all or part of the work and payments therefor until satisfactory action has been undertaken, terminate this Agreement for noncompliance/default, impose sanctions, or take other action deemed appropriate by the TPA under the circumstances.

I. The CONSULTANT shall provide the TPA with a copy of the CONSULTANT's contract with any subconsultant and any other related documentation requested by TPA's representative.

J. The CONSULTANT agrees to maintain in Palm Beach County, Florida or such other location in Florida approved by the TPA's representative, all relevant records, documents of payments and information necessary to document payments to DBEs for at least five (5) years following the termination of this Agreement. In the event litigation is commenced involving or relating to a DBE, the CONSULTANT agrees to maintain such records until the conclusion of all litigation and the expiration of any appeal periods. All such records and information shall be immediately made available for reproduction, examination, or inspection upon the request of TPA's representative or any authorized representative of FDOT or the U.S. DOT or any agency thereof. The CONSULTANT agrees to require all of its DBE subconsultants 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 CONSULTANT shall certify that it has disbursed to all subconsultants and suppliers, having an interest in the Agreement or performing work or providing materials or supplies used by the CONSULTANT in its performance of the Work, their pro-rata share(s) of the payment received by the CONSULTANT from previous progress payments for all work completed and materials furnished in the previous period, less any retainage withheld by the CONSULTANT pursuant to an agreement with a subconsultant for payment, as approved by the TPA and FDOT, and as deemed appropriate by TPA. The CONSULTANT shall return all retainage payments withheld by the CONSULTANT within thirty (30) days after each subconsultant's work has been satisfactorily completed. The CONSULTANT shall not be entitled to any progress payment before certification, unless the CONSULTANT demonstrates good cause for not making any such required payment and furnishes written notification of such good cause, acceptable to the TPA, to both the TPA and the affected subconsultants and suppliers.

L. Within thirty (30) days of the CONSULTANT's receipt of any payment(s) received under this Agreement and any final progress payment received thereafter, the CONSULTANT shall pay all subconsultants and suppliers having an interest in the Agreement or performing work or providing materials or supplies used by the CONSULTANT in its performance of the Work, their pro-rata share(s) of the payment(s), unless the CONSULTANT demonstrates good cause, acceptable to the TPA, for not making any required payment(s) and furnishes written notification to the TPA and the affected subconsultants 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 CONSULTANT 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 CONSULTANT (or the CONSULTANT itself, if a DBE), and by reviewing payments and retainage to ensure subconsultants are paid promptly as defined in Section 5 D. The selected CONSULTANT 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 CONSULTANT is responsible for compliance with this section, both for itself and its subconsultant, 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT's most favored customer for the same or substantially similar service.

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

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

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

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

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

Upon the CONSULTANT's request, the TPA shall consider the facts and extent of any failure to perform the Work and, if the CONSULTANT's failure to perform was without its fault or negligence, a Work Order's Timeline or Schedule and/or any other affected provision of this Agreement shall be revised accordingly, subject to the TPA's rights to change, terminate, or stop any or all of the Work at any time.

Section 43. Pledge of Credit. The CONSULTANT shall not pledge the TPA's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The

CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

Section 42. Florida Law Prevails; Venue of Enforcement.

A. This Agreement shall be governed by the laws of the State of Florida. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

B. This Agreement was made in Palm Beach County. The parties deem the most central location convenient to the parties and of the storage of documents related to this Agreement is in Palm Beach County. The TPA is a local governmental agency located in Palm Beach County, and pursuant to the home venue provision, the parties to this Agreement agree that venue of any legal action shall be in the State of Florida's 15th Judicial Circuit in and for Palm Beach County or in the U.S. District Court, Southern District.

Section 43. Preparation of Documents, Certifications and Reports.

Should the TPA be required by FDOT or an agency of the Federal or State government, including but not limited to the USDOT, or any agency thereof, to provide any certifications, documents or reports related to or produce as a result of this Agreement, the CONSULTANT will promptly 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 44. Miscellaneous provisions.

A. Inspection, Review, Approval, and Audit. It is understood and agreed that all rights of the USDOT relating to inspection, review, approval, and audit of the work, tracings, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America and the State of Florida. Pursuant to Section 20.055(5), Florida Statutes, It is the duty of every state officer, employee, agency, special district, board, commission, CONSULTANT, and subCONSULTANT to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. The CONSULTANT understands and will comply with this subsection.

B. Federal Participation. It is understood and agreed that, in order to permit federal participation in the expenditure of PL Funds, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of FHWA or as otherwise provided for in this article.

C. The TPA, in accordance with Title VI of the Civil Rights Act of 1964, 42 USC 2000d *et seq.*, and 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notices all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

D. The CONSULTANT shall provide to the TPA its Federal Tax ID Number within thirty (30) days of the effective date of this Agreement.

Section 45. Foreign Market Restrictions.

A. The CONSULTANT shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade

Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

B. By execution of this Agreement, the CONSULTANT certifies that the CONSULTANT is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it entity has no business operations, as defined in s. 287.136, Florida Statutes, in Cuba or Syria. Further, by execution of this Agreement, the CONSULTANT certifies that the CONSULTANT is not participating in a boycott of Israel, as defined in s. 215.37525, Florida Statutes.

C. With funds granted or allocated pursuant to this Agreement, the CONSULTANT shall not bid on, submit a proposal for, or enter into or renew a contract for goods or services of: (1) Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or (2) One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company: (i) Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes; or (ii) Is engaged in business operations in Cuba or Syria.

D. The CONSULTANT agrees that this Agreement may be terminated by the TPA without further liability to the TPA if the CONSULTANT is found to have submitted a false certification as provided under Section, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or been engaged in business operations in Cuba or Syria. The CONSULTANT further agrees that this Agreement may be terminated by the TPA without further liability to the TPA if the CONSULTANT is found to have entered into contract or renewed on or after July 1, 2018, if the company is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

E. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

F. If federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Section 46. Recycled Products/Recovered Materials

(42 U.S.C. § 6962, 40 C.F.R. part 247, & 2 C.F.R. part § 200.322)

The CONSULTANT agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

Section 47. Buy America

(49 U.S.C. 5323(j) & 49 C.F.R. part 661)

For contracts valued at over \$150,000, the CONSULTANT agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. The CONSULTANT must submit to TPA the appropriate Buy America certification below with its id or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

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Agreement FY25-03A

IN WITNESS WHEREOF, the Palm Beach Transportation Planning Agency and the CONSULTANT have hereunto set their hands to this Agreement on this 26 day of June 2025.

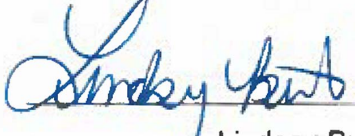
KITTELSON & ASSOCIATES INC.,
Authorized to do business in the State of Florida

By: 
Name John Paul Weesner

Title: Authorized Member/Manager

Date: June 12, 2025

ATTEST FOR KITTELSON & ASSOCIATES:



Print Name: Lindsey Burt

Palm Beach Transportation Planning Agency

By: 
Valerie Neilson, Executive Director

Date: 6/26/2025

ATTEST FOR TPA:


Ruth Del Pino, TPA Agency Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Milton Collins, Esq.
TPA General Counsel

Exhibit A

Scope of Services

The major types of work to be performed include transportation planning activities identified in the Palm Beach Transportation Planning Agency's Unified Planning Work Program (UPWP). The work generally includes, but is not limited to:

- Transportation studies (congestion, active transportation, transit, corridor, and freight)
- Land use, urban design, and transit-oriented development
- Safety, safe systems, and public health design and planning
- Plan views, preliminary designs, and renderings of transportation facilities
- Traffic, network analysis, and transportation modeling
- Performance Based Planning and Programming
- Project review and prioritization
- Public involvement tools, graphics, content production
- Collect, maintain, analyze, and visualize transportation and GIS data
- Innovative transportation planning and engineering, including new technologies
- Discretionary grant application preparation and delivery
- Administrative support for the TPA
- Core products support, including the Transportation Improvement Program, Long Range Transportation Plan, and Unified Planning Work Program

Exhibit B

Hourly Rate Schedule



**Palm Beach Transportation Planning Agency
Rate Schedule
As of May 2025**

Classification	Hourly Billing Rate*
Senior Principal Engineer/Planner	\$313.46
Principal Engineer /Planner	\$276.91
Associate Engineer /Planner	\$245.12
Senior Engineer /Planner	\$199.12
Engineer/Planner	\$163.71
Transportation Analyst	\$135.99
Technician I	\$111.15
Technician II	\$131.30
Senior Technician	\$150.71
Associate Technician	\$209.40
Office Support	\$109.40
Data Analyst / Software Technician	\$159.27
Senior Data Scientist/Developer	\$233.24

Exhibit C

AUTHORIZED REPRESENTATIVE DECLARATIONS FORM

John Paul Weesner (Name of Representative) for:
Kittelson & Associates, Inc. (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.

Continued on Next Page

AUTHORIZED REPRESENTATIVE DECLARATIONS FORM - CONTINUED

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-CONSULTANTS 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 CONSULTANT, the CONSULTANT 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
John Paul Weesner

(CORPORATE SEAL)

Print Name
Principal Urban Planner

Title
June 12, 2025
Date



STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this 12 day of June, 2025,

Personally known to me X OR

Has produced Identification , type of identification produced .

Notary Public, State of Florida
Lindsey Burt

(Printed Name)



Lindsey Burt
Comm.: HH 267629
Expires: Aug 16, 2026
Notary Public - State of Florida

My commission expires: August 16, 2026

IMPORTANT: FAILURE TO SUBMIT THIS PAGE, INCLUDING ALL THE REQUIRED INFORMATION AND SIGNATURES, WILL RESULT IN IMMEDIATE REJECTION OF THE AGREEMENT.

Exhibit D

FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACT CLAUSES

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

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

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

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

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

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

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, CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any other applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

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

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

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

F. Disadvantaged Business Enterprises (DBE). See Section 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, CONSULTANT is required to verify that neither it nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945 and does so hereby certify. CONSULTANT agrees to comply with and does hereby assure and certify the compliance of each third-party CONSULTANT and sub-recipient at any tier, with 49 CFR 29, Subpart C, while its proposal, offer or bid is pending and throughout the period that any agreement arising out of such offer, proposal or bid is in effect. CONSULTANT further agrees to include a provision requiring such compliance in its subcontracts or any lower tier covered transaction it enters into.

R. Clean Air. The Clean Air requirements apply to all contracts exceeding \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year. CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, *et seq.* CONSULTANT agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. CONSULTANT

further agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FTA.

S. Clean Water. If this Agreement is valued at \$150,000 or more, CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* CONSULTANT agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FTA.

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

U. Seat Belts. CONSULTANT is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate CONSULTANT-owned, rented or personally operated vehicles, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging, and to address each in every sub-agreement it enters into related to this Agreement. Specifically, CONSULTANT is encouraged to comply with: (a) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note; (b) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (c) U.S. DOT provisions pertaining to Distracted Driving as set forth in said orders. Notwithstanding the foregoing, Section 316.614, F.S., requires that the CONSULTANT, its subconsultants, and its and their employees, volunteers, agents, use and wear seat belts at all times when a motor vehicle, as defined by Florida law, is operated or in use.