

RIVER TO SEA TPO AGREEMENT FOR

THIS AGREEMENT made and entered into this ____ day of _____, 2019 by and between the River to Sea TPO and whose address is 2570 W. International Speedway Blvd., Suite 100 Daytona Beach, Florida 32114, hereinafter referred to as the "TPO", and _____, an engineering and planning consulting firm, whose corporate address is _____, and whose local address is _____, hereinafter referred to as the "CONSULTANT". The TPO and the CONSULTANT are collectively referred to herein as the Parties.

WITNESSETH:

WHEREAS, the TPO desires to retain the CONSULTANT for the work identified in the bid and/or proposal specifications outlined in the TPO's procurement activities; and

WHEREAS, the TPO desires to retain the CONSULTANT to develop the 2045 Long Range Transportation Plan, as subsequently specifically set out in a Task Work Order(s) to be issued under this Agreement; and

WHEREAS, the TPO desires to employ the CONSULTANT for the performance necessary to support the activities, programs and projects of the TPO upon the terms and conditions hereinafter set forth, and the CONSULTANT is desirous of performing and providing such services upon said terms and conditions; and

WHEREAS, the CONSULTANT hereby warrants and represents to the TPO that it is competent and otherwise able to provide professional services to the TPO; and

WHEREAS, all TPO promulgated bid (solicitation) documents pertaining to procurement activities relating to this matter and all submissions submitted by the CONSULTANT in the proposal submitted to the TPO are hereby incorporated herein to the extent not inconsistent with the terms and conditions as set forth herein; and

WHEREAS, the TPO desires to retain the CONSULTANT to provide all labor, materials, equipment, facilities and services in accordance with, but not limited to, the provisions set forth in the Scope of Services (Exhibit "A"); and

WHEREAS, to the extent required by controlling law, this Agreement has been procured subject to the provisions of the *Consultants Competitive Negotiations Act*; and

WHEREAS, the TPO desires to use the expertise and knowledge of the CONSULTANT; and

WHEREAS, the CONSULTANT recognizes the importance to the public of strict adherence to all laws, rules and regulations with particular regard to safety procedure and process.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

SECTION 1: GENERAL PROVISIONS.

(a). The term "CONSULTANT" as used in this Agreement is hereby defined herein as that person or entity, including employees, servants, partners, principals, agents and assignees providing services under this Agreement. The CONSULTANT is an independent contractor and not an agent, representative or employee of the TPO.

(b). The CONSULTANT acknowledges that the TPO may retain other goods and/or service providers to provide the same goods and/or services for TPO projects. The CONSULTANT acknowledges that the TPO, at the TPO's option, may request proposals from the CONSULTANT and the other goods and/or service providers for TPO projects. The TPO reserves the right to select which goods and/or service provider shall provide goods and/or services for the TPO's projects.

(c). The CONSULTANT agrees to provide and ensure coordination between goods/services providers; provided, however, that CONSULTANT is not responsible for the actions or inactions of third parties except its subconsultants .

(d). The recitals herein are true and correct and form and constitute a material part of this Agreement upon which the parties have relied.

(e). Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The persons executing this Agreement for the CONSULTANT certify that they are authorized to bind the CONSULTANT fully to the terms of this Agreement.

(f). Time is of the essence of the lawful performance of the duties and obligations contained in this Agreement to include, but not be limited to, each Work Order. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement and each Work Order.

(g). When the term "law" is used herein, said phrase shall include statutes, codes, rules and regulations of whatsoever type or nature enacted or adopted by a governmental entity of competent jurisdiction.

(h). To the extent applicable to CONSULTANT's services, the CONSULTANT hereby guarantees the TPO that all work and all material, supplies, services and equipment as listed on a Work Order meet the requirements, specifications and standards as provided for under the *Federal Occupations Safety and Health Act of 1970*, from time to time amended and in force on the date hereof.

(i). It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the CONSULTANT (including, but not limited to, its officers, employees, and agents) the agent, representative, or employee of the TPO for any purpose, or in any manner, whatsoever. The CONSULTANT is to be and shall remain forever an independent CONSULTANT with respect to all services performed under this Agreement.

(j). Persons employed by the CONSULTANT in the provision and performance of the goods and/or services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the TPO's officers and employees either by operation of law or by the TPO.

(k). No claim for goods and/or services furnished by the CONSULTANT not specifically provided for herein or in a Work Order shall be honored by the TPO.

SECTION 2: SCOPE OF SERVICES; WORK ORDERS FOR SERVICES.

(a). The CONSULTANT shall provide the goods and/or services as generally set forth, described in Exhibit "A" to this Agreement, and, subsequently, as specifically detailed in various Work Orders as may be issued from time-to-time by the TPO.

(b). The CONSULTANT shall safely, diligently, and in a professional and timely manner perform, with its own equipment and assets, and provide goods and/or services included in this Agreement and in each subsequently entered Work Order.

(c). Unless modified in writing by the parties hereto, the duties of the CONSULTANT shall not be construed to exceed the provision of the goods and/or services pertaining to this Agreement and any Work Order issued pursuant to this Agreement.

SECTION 3: WORK ORDERS.

(a). The provision of goods and/or services, to be performed under the provisions of this Agreement, shall be commenced as set forth in the TPO's bid and procurement documents upon the execution of this Agreement and a Work Order issued on a form provided by the TPO hereunder commencing the provision of goods and services. Additional services to be performed or goods to be provided by the CONSULTANT to the TPO shall be authorized in written Work Orders issued by the TPO on a form provided by the TPO. Work Orders executed by the TPO shall include a detailed description of quantities, services and a completion schedule. The CONSULTANT shall review Work Orders and notify the TPO in writing of asserted

inadequacies for the TPO's correction, if warranted. In every case, if work is completed by the CONSULTANT without authorization by a Work Order or a change order, the TPO is not obligated to compensate the CONSULTANT for the unauthorized work.

(b). If the services required to be performed by a Work Order are clearly defined, the Work Order shall be issued on a "Fixed Fee" basis. The CONSULTANT shall perform all services required by the Work Order but, in no event, shall the CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(c). If the services are not clearly defined, the Work Order may be issued on a "Time Basis Method" and contain a Not-to-Exceed amount. If a Not-to-Exceed amount is provided, the CONSULTANT shall perform all work required by the Work Order; but in no event, shall the CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(d). If the services are not clearly defined, the Work Order may be issued on a "Time Basis Method" and contain a Limitation of Funds amount. The CONSULTANT is not authorized to exceed that amount without the prior written approval of the TPO. Said approval, if given by the TPO, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the TPO whenever the CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(e). For Work Orders issued on a "Fixed Fee Basis", the CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed; but, in no event, shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed.

(f). For Work Orders issued on a "Time Basis Method" with a Not-to-Exceed amount, the CONSULTANT may invoice the amount due for actual work hours performed but, in no event, shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed.

(g). Each Work Order issued on a "Fixed Fee Basis" or "Time Basis Method" with a Not-to-Exceed amount shall be treated separately for retainage purposes, which shall be prescribed on the face of the Work Order. If the TPO determines that work is substantially complete and the amount retained is considered to be in excess, the TPO may, at its sole and absolute discretion, release the retainage or any portion thereof.

(h). For Work Orders issued on a "Time Basis Method" with a Limitation of Funds amount, the CONSULTANT may invoice the amount due for services actually performed and completed. The TPO shall pay the CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a "Time Basis Method" with a Limitation of Funds amount.

(i). Payments shall be made by the TPO to the CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order

shall be invoiced separately. The CONSULTANT shall render to the TPO, at the close of each calendar month, an itemized invoice properly dated, describing any services rendered, the cost of the services, the name and address of the CONSULTANT, Work Order Number, Contract Number and all other information required by this Agreement.

SECTION 4: CONSULTANT UNDERSTANDING OF GOODS/SERVICES REQUIRED.

Execution of this Agreement by the CONSULTANT is a representation that the CONSULTANT is familiar with the goods and/or services to be provided and/or performed and with local conditions. The CONSULTANT shall make no claim for additional time or money based upon its failure to comply with this Agreement. The CONSULTANT has informed the TPO, and hereby represents to the TPO, that it has extensive experience in performing and providing the services and/or goods described in this Agreement and to be identified in the Work Orders, and that it is well acquainted with the work conditions and the components that are properly and customarily included within such projects and the requirements of laws, ordinances, rules, regulations or orders of any public authority or licensing entity having jurisdiction over the TPO's Projects. Execution of a Work Order shall be an affirmative and irrefutable representation by the CONSULTANT to the TPO that the CONSULTANT is fully familiar with any and all requisite work conditions of the provision of the goods and/or services.

SECTION 5: CHANGE ORDERS.

(a). The TPO may revise the scope of services or order for goods set forth in any particular Work Order.

(b). Revisions to any Work Order shall be authorized in writing by the TPO as a Change Order. Each Change Order shall include a schedule of completion for the goods and/or services authorized. Change Orders shall identify this Agreement and the appropriate Work Order number. Change Orders may contain additional instructions or provisions specific upon certain aspects of this Agreement pertinent to the goods and/or services to be provided. Such supplemental instructions or provisions shall not be construed as a modification of this Agreement. An Agreement between the parties on and execution of any Change Order shall constitute a final settlement and a full accord and satisfaction of all matters relating to the change and to the impact of the change on unchanged goods and/or work, including all direct and indirect costs of whatever nature, and all adjustments to the CONSULTANT's schedule.

SECTION 6: CONSULTANT RESPONSIBILITIES.

(a). The CONSULTANT shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, safety, and the coordination of all goods and/or services furnished by the CONSULTANT under this Agreement as well as the conduct of its staff, personnel, employees and agents. The CONSULTANT shall work closely with the TPO on all aspects of the provision of the goods and/or services. With respect to services, the CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy and the

coordination of all of the following which are listed for illustration purposes only and not as a limitation: documents, analysis, reports, data, plans, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his/her/its plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature. The CONSULTANT's submissions in response to the subject bid or procurement processes are incorporated herein by this reference thereto.

(b). Neither the TPO's review, approval or acceptance of, nor payment for, any of the goods and/or services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the CONSULTANT shall be and remain liable to the TPO in accordance with applicable law for all damages to the TPO caused by the CONSULTANT's negligent or improper performance or failure to perform any of the goods and/or services furnished under this Agreement.

(c). The rights and remedies of the TPO, provided for under this Agreement, are in addition to any other rights and remedies provided by law.

(d). Time is of the essence in the performance of all goods and/or services provided by the CONSULTANT under the terms of this Agreement and each and every Work Order.

SECTION 7: TPO RIGHTS AND RESPONSIBILITIES.

(a). The TPO shall reasonably cooperate with the CONSULTANT in a timely fashion at no cost to the CONSULTANT as set forth in this Section.

(b). The TPO shall furnish a TPO representative, as appointed by the designated representative to administer, review and coordinate the provision of services under Work Orders.

(c). The TPO shall make TPO personnel available where, in the TPO's opinion, they are required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT shall be determined solely at the discretion of the TPO.

(d). The TPO shall examine all of the CONSULTANT's goods and/or services and indicate the TPO's approval or disapproval within a reasonable time so as not to materially delay the provisions of the goods and/or services of the CONSULTANT.

(e). The TPO shall transmit instructions, relevant information, and provide interpretation and definition of TPO policies and decisions with respect to any and all materials and other matters pertinent to the services covered by this Agreement.

(f). The TPO shall give written notice to the CONSULTANT whenever the TPO's designated representative knows of a development that affects the goods and/or services

provided and performed under this Agreement, timing of the CONSULTANT's provision of goods and/or services, or a defect or change necessary in the goods and/or services of the CONSULTANT.

(g). The rights and remedies of the TPO provided for under this Agreement are in addition to any other rights and remedies provided by law. The TPO may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after performance of this Agreement as well as the adjustment of payments made to the CONSULTANT based upon the quality of work of the CONSULTANT.

(h). The prevailing party shall be entitled to recover any and all legal costs including, but not limited to, reasonable attorney fees and other legal costs that it may incur in any legal actions it may pursue in the enforcement of the terms and conditions of this Agreement or the responsibilities of the other party in carrying out the duties and responsibilities deriving from this Agreement.

(i). The failure of either party to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the party hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(j). Neither the TPO's review, approval or acceptance of, nor payment for, any of the goods and/or services required shall be construed to operate as a waiver of any rights under this Agreement nor or any cause of action arising out of the performance of this Agreement and the CONSULTANT shall be and always remain liable to the TPO in accordance with applicable law for any and all damages to the TPO or the public caused by the CONSULTANT's negligent or wrongful provision or performance of any of the goods and/or services furnished under this Agreement.

(k). All deliverable analysis, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the CONSULTANT's services or have been created during the course of the CONSULTANT's performance under this Agreement shall become the property of the TPO after final payment is made to the CONSULTANT.

SECTION 8: COMPENSATION.

(a). For the work set forth in Exhibit "A" of this Agreement, the CONSULTANT shall be paid in accordance with the schedule of charges as set forth in Exhibit "B" attached hereto.

(b). There are no reimbursable expenses to be paid to the CONSULTANT except as specifically set forth herein.

SECTION 9: INVOICE PROCESS.

(a). Invoices, which are in an acceptable form to the TPO and without disputable items, which are received by the TPO, will be processed for payment within thirty (30) days of receipt by the TPO.

(b). The CONSULTANT will be notified of any disputable items contained in invoices submitted by the CONSULTANT within fifteen (15) days of receipt by the TPO with an explanation of the deficiencies.

(c). The TPO and the CONSULTANT will make every effort to resolve all disputable items contained in the CONSULTANT's invoices.

(d). Each invoice shall reference this Agreement, the appropriate Work Order and Change Order if applicable, and billing period.

(e). The *Florida Local Government Prompt Payment Act* shall apply when applicable. A billing period represents the dates in which the CONSULTANT completed goods and/or services referenced in an invoice.

(f). Invoices are to be forwarded directly to:

Julie Adamson, Chief Financial Officer
River to Sea TPO
2570 W. International Speedway Blvd., Suite 100
Daytona Beach, FL 32114

SECTION 10: COMMENCEMENT/IMPLEMENTATION SCHEDULE OF AGREEMENT.

(a). The CONSULTANT shall commence the provision of goods and/or services as described in this Agreement upon execution of this Agreement or execution of this Agreement and execution of a Work Order issued by the TPO.

(b). The CONSULTANT and the TPO agree to make every effort to adhere to the schedules required by the TPO or as established for the various Work Orders as described in each Work Order. However, if the CONSULTANT is delayed at any time in the provision of goods and/or services by any act or omission of the TPO, or of any employee, tumult of the TPO, or by any other CONSULTANT employed by the TPO, or by changes ordered by the TPO, or by strikes, lock outs, fire, unusual delay in transportation, terrorism, unavoidable casualties, or any other causes of force majeure not resulting from the inactions or actions of the CONSULTANT and beyond the CONSULTANT's control which would not reasonably be expected to occur in connection with or during performance or provision of the goods and/or services, or by delay authorized by the TPO pending a decision, or by any cause which the TPO shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the TPO may decide in its sole and absolute discretion. It is further expressly understood and

agreed that the CONSULTANT shall not be entitled to any damages or compensation, or be reimbursed for any losses on account of any delay or delays resulting from any of the aforesaid causes or any other cause whatsoever.

SECTION 11: TERM/LENGTH OF AGREEMENT.

(a). The contract will be for a period of up to two years and/or by the adoption of the 2045 LRTP. The adoption of the 2045 LRTP must occur by September 23, 2020.

(b). As stated herein, work shall be accomplished in accordance with the schedule established in the Task Work Order.

SECTION 12: DESIGNATED REPRESENTATIVES.

(a). The TPO designates the TPO's Executive Director or her designated representative, to represent the TPO in all matters pertaining to and arising from the work and the performance of this Agreement.

(b). The TPO's Executive Director, or her designated representative, shall have the following responsibilities:

(1). Examination of all work and rendering, in writing, decisions indicating the TPO's approval or disapproval within a reasonable time so as not to materially delay the work of the CONSULTANT;

(2). Transmission of instructions, receipt of information, and interpretation and definition of TPO's policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement;

(3). Giving prompt written notice to the CONSULTANT whenever the TPO official representative knows of a defect or change necessary in the project; and

(4). Coordinating and managing the CONSULTANT's preparation of any necessary applications to governmental bodies, to arrange for submission of such applications.

(c). Until further notice from the TPO, the designated representative for this Agreement is:

Ms. Colleen Nicoulin, AICP, RSP
Senior Transportation Planner/Project Manager
River to Sea TPO
2570 W. International Speedway Blvd., Suite 100
Daytona Beach, FL 32114

(d). The CONSULTANT's designated representative is:

[INSERT CONSULTANT CONTACT INFO]

SECTION 13: TERMINATION/SUSPENSION OF AGREEMENT.

(a). The TPO may terminate this Agreement or any Work Order for any one (1) or more of the reasons as follows:

(1). If, in the TPO's opinion, adequate progress to be provided or under a Work Order is not being made by the CONSULTANT due to the CONSULTANT's failure to perform; or

(2). If, in the TPO's opinion, the quality of the goods and/or services provided by the CONSULTANT is/are not in conformance with commonly accepted professional standards, standards of the TPO, and the requirements of Federal and/or State regulatory agencies, and the CONSULTANT has not corrected such deficiencies in a timely manner as reasonably determined by the TPO; or

(3). The CONSULTANT or any employee or agent of the CONSULTANT is indicted or has a direct charge issued against him/her for any crime arising out of or in conjunction with any work that has been performed by the CONSULTANT; or

(4). The CONSULTANT becomes involved in either voluntary or involuntary bankruptcy proceedings, or makes an assignment for the benefit of creditors; or

(5). The CONSULTANT violates the Standards of Conduct provisions herein or any provision of Federal, State or local law.

(b). In the event of any of the causes described in this Section, the TPO's designated representative may send a certified letter to the CONSULTANT requesting that the CONSULTANT show cause why the Agreement or any Work Order should not be terminated. If assurance satisfactory to the TPO of corrective measures to be made within a reasonable time is not given to the TPO within seven (7) calendar days of the date of the letter, the TPO may consider the CONSULTANT to be in default, and may then immediately terminate this Agreement or any Work Order in progress under this Agreement.

(c). In the event that this Agreement or a Work Order is terminated for cause and it is later determined that the cause does not exist, then this Agreement or the Work Order shall be deemed terminated for convenience by the TPO and the TPO shall have the right to so terminate this Agreement without any recourse by the CONSULTANT.

SECTION 14: TERMINATION BY CONSULTANT FOR CAUSE.

(a). The CONSULTANT may terminate this Agreement only if the TPO fails to pay the CONSULTANT in accordance with this Agreement.

(b). In the event of the cause described in Subsection (a), the CONSULTANT shall send a certified letter requesting that the TPO show cause why the Agreement should not be terminated. If adequate assurances are not given to the CONSULTANT within fifteen (15) days of the receipt by the TPO of said show cause notice, then the CONSULTANT may consider the TPO to be in default, and may immediately terminate this Agreement.

SECTION 15: TERMINATION BY THE TPO WITHOUT CAUSE.

(a). The TPO shall have the right to terminate this Agreement without cause with a sixty (60) day written notice to the CONSULTANT. The TPO reserves the right to terminate any Agreement for cause with a five (5) day written notice to the CONSULTANT. Notice shall be served to the parties as specified in the Agreement.

(b). In the event that this Agreement is terminated, the TPO shall identify any specific Work Order(s) being terminated and the specific Work Order(s) to be continued to completion pursuant to the provisions of this Agreement.

(c). This Agreement will remain in full force and effect as to all authorized Work Order(s) that is/are to be continued to completion.

(d). In the event that, after the TPO's termination for cause for failure of the CONSULTANT to fulfill its obligations under this Agreement, it is found that the CONSULTANT has not so failed, the termination shall be deemed to have been for convenience and without cause.

SECTION 16: PAYMENT IN THE EVENT OF TERMINATION.

In the event this Agreement, or any Work Order, is terminated or canceled prior to final completion without cause, payment for the unpaid portion of the services provided by the CONSULTANT through the date of termination, and any additional services, shall be paid to the CONSULTANT.

SECTION 17: ACTION FOLLOWING TERMINATION.

Upon receipt of notice of termination given by either party, the terminated party shall promptly discontinue the provision of all goods and/or services, unless the notice provides otherwise.

SECTION 18: SUSPENSION.

(a). The performance or provision of the CONSULTANT's goods and/or services under any Work Order or under this Agreement may be suspended by the TPO at any time.

(b). In the event the TPO suspends the performance or provision of the CONSULTANT's services hereunder, the TPO shall so notify the CONSULTANT in writing, such

suspension becoming effective within seven (7) days from the date of mailing, and the TPO shall pay to the CONSULTANT within thirty (30) days all compensation which has become due to and payable to the CONSULTANT to the effective date of such suspension. The TPO shall thereafter have no further obligation for payment to the CONSULTANT for the suspended provision of goods and/or services unless and until the TPO's designated representative notifies the CONSULTANT in writing that the provision of the goods and/or services of the CONSULTANT called for hereunder are to be resumed by the CONSULTANT.

(c). Upon receipt of written notice from the TPO that the CONSULTANT's provision of goods and/or services hereunder are to be resumed, the CONSULTANT shall continue to provide the services to the TPO.

SECTION 19: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION.

(a). The CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, sexual orientation or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The CONSULTANT, moreover, shall comply with all the requirements as imposed by the *Americans with Disabilities Act* and the *Americans with Disabilities Amendment Act*, the regulations of the Federal government issued thereunder, and any and all requirements of Federal or State law related thereto. Notwithstanding the generality of the foregoing, the CONSULTANT agrees to adhere to the specific obligations set forth in this Section.

(b). During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- (1). Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- (2). Nondiscrimination: The CONSULTANT, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of 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 contract covers a program set forth in Appendix B of the Regulations.

- (3). 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 contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- (4). Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5). Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration and/or the Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
 - (a). Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies; and/or
 - (b). Cancellation, termination or suspension of the contract, in whole or in part.
- (6). Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant hereto. The CONSULTANT

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

- (7). Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. S2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. S 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. S 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. S 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; the Age Discrimination Act of 1975, as amended, (42 U.S.C. S6101 et. Seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 U.S.C. S 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); the Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and CONSULTANTs, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibits 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. SS 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; the Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. S 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies and activities

with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

- (8). In accordance with 49 Code of Federal Regulations Part 26.21, and the Florida Department of Transportation's Disadvantaged Business Enterprise (DBE) Program Plan, DBE participation on Federal Highway Administration -assisted contracts must be achieved through race-neutral methods. 'Race neutral' means that the TPO can likely achieve the overall DBE goal of 10.65% through ordinary procurement methods. Therefore, no specific DBE contract goal may be applied to this project. Nevertheless, the TPO is committed to supporting the identification and use of DBEs and other small businesses and encourages all reasonable efforts to do so. Furthermore, the TPO recommends the use of certified DBE's listed in the Florida Unified Certification Program (UCP) DBE Directory, who by reason of their certification are ready, willing, and able to provide and assist with the services identified in the scope of work. Assistance with locating DBEs and other special services are available at no cost through Florida Department of Transportation's Equal Opportunity Office DBE Supportive Services suppliers. More information is available by visiting <http://www.fdot.gov/equalopportunity/serviceproviders.shtm> or calling 850-414-4750.
- (9). Consistent with 49 Code of Federal Regulations Part 26.13(b), the CONSULTANT, and any and all sub-recipients or subcontractors, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 Code of Federal Regulations Part 26 in the award and administration of Florida Department of Transportation-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as the TPO deems appropriate which may include, but is not limited to the following:
- (i). Withholding monthly progress payments;
 - (ii). Assessing sanctions;
 - (iii). Liquidated damages; and/or

- (iv). Disqualifying the contractor from future bidding as non-responsible.
- (10). Notwithstanding the foregoing specific references to specific provisions of law and other requirements, the CONSULTANT shall adhere to all provisions of law required by grants to or funding of the TPO and, further, agrees to amend this Agreement and provide such certifications as may be required by such grant or funding source or the TPO on its own accord.

SECTION 20: INDEMNITY AND INSURANCE.

(a). To the fullest extent permitted by law, the CONSULTANT shall indemnify and hold harmless the TPO, its agents, servants, officers, officials and employees, or any of them, from and against any and all claims, damages, losses, and expenses including, but not limited to, reasonable attorney's fees and other legal costs such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony, arising out of or resulting from the performance or provision of services required under this Agreement, provided that same is caused by the error, omission, negligent act, failure to act, malfeasance, misfeasance, or misconduct of the CONSULTANT, its agents, servants, officers, officials, employees, or sub consultants.

(b). In accordance with Section 725.06, *Florida Statutes*, adequate consideration has been provided to the CONSULTANT for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged.

(c). Nothing herein shall be deemed to affect the rights, privileges, and immunities of the TPO as set forth in Section 768.28, *Florida Statutes*.

(d). In claims against any person or entity indemnified under this Section by an employee of the CONSULTANT or its agents or subconsultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONSULTANT or its agents or subconsultants, under Workers Compensation acts, disability benefit acts, or other employee benefit acts.

(e). The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the indemnification provision in this Agreement; provided, however, that the CONSULTANT must also comply with the provisions of this Agreement relating to insurance coverages.

(f). The CONSULTANT shall submit a report to the TPO within twenty-four (24) hours of the date of any incident resulting in damage or which is reasonably likely to result in a claim of damage.

(g). In the event that the CONSULTANT is providing services as a “design professional”, the indemnification by the CONSULTANT running in favor of the TPO shall be to the maximum extent permissible under the provisions of Section 725.08, *Florida Statutes*.

SECTION 21: INSURANCE.

(a). The CONSULTANT shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the State of Florida and in a form acceptable to the TPO and with only such terms and conditions as may be acceptable to the TPO:

(1). Workers Compensation/Employer Liability: The CONSULTANT shall provide Worker’s Compensation for all employees. The limits will be statutory limits for Worker’s Compensation insurance and \$3,000,000 for Employer’s Liability.

(2). Comprehensive General Liability: The CONSULTANT will provide coverage for all operations including, but not limited to, contractual, products, complete operations, and personal injury. The limits will not be less than \$2,000,000 Combined Single Limit (CSL) or its equivalent.

(3). Comprehensive Automobile Liability: The CONSULTANT shall provide complete coverage for owned and non-owned vehicles for limits not less than \$2,000,000 CSL or its equivalent.

(4). The Consultant will have and maintain during the term of this Agreement, in a form acceptable to the R2C TPO, a professional liability insurance policy or policies, or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, *Florida Statutes*, with a company or companies authorized to do business in the State of Florida, acceptable to the R2C TPO, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the amount specified in the Agreement. The amount of liability insurance to be maintained by the Consultant is \$1,000,000.

(b). All insurance other than Workers Compensation and Professional Liability to be maintained by the CONSULTANT shall specifically include the TPO as an additional insured.

(c). The CONSULTANT shall provide Certificates of Insurance to the TPO evidencing that all such insurance is in effect prior to the issuance of the first Work Order under this Agreement from the TPO. These Certificates of Insurance shall become part of this Agreement. Neither approval by the TPO nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve the CONSULTANT of the CONSULTANT’s full responsibility for performance of any obligation including the CONSULTANT’s indemnification of the TPO under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, *Florida Statutes*, or (3) fail to maintain the requisite Best’s Rating and Financial Size Category, the CONSULTANT shall, as soon as the

CONSULTANT has knowledge of any such circumstance, immediately notify the TPO and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the CONSULTANT has replaced the unacceptable insurer with insurance acceptable to the TPO, the CONSULTANT shall be deemed to be in default of this Agreement.

(d). The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, thirty (30) days prior notice will be given to the TPO by submission of a new Certificate of Insurance.

(e). The CONSULTANT shall furnish Certificate of Insurance directly to the TPO's designated representative. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount and classification required by this Agreement.

(f). Nothing in this Agreement or any action relating to this Agreement shall be construed as the TPO's waiver of sovereign immunity beyond the limits set forth in Section 768.28, *Florida Statutes*.

(g). The TPO shall not be obligated or liable under the terms of this Agreement to any party other than the CONSULTANT. There are no third party beneficiaries to this Agreement.

(h). The CONSULTANT is an independent CONSULTANT and not an agent, representative, or employee of the TPO. The TPO shall have no liability except as specifically provided in this Agreement.

(i). All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the TPO.

SECTION 22: STANDARDS OF CONDUCT.

(a). 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 the CONSULTANT 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 of making this Agreement.

(b). The CONSULTANT shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection or discrimination.

(c). The CONSULTANT hereby certifies that no undisclosed (in writing) conflict of interest exists with respect to the Agreement, including, but not limited to, any conflicts that may be due to representation of other clients, customers or vendees, other contractual

relationships of the CONSULTANT, or any interest in property that the CONSULTANT may have. The CONSULTANT further certifies that any conflict of interest that arises during the term of this Agreement shall be immediately disclosed in writing to the TPO. Violation of this Section shall be considered as justification for immediate termination of this Agreement.

(d). The CONSULTANT shall ensure that all taxes due from the CONSULTANT are paid in a timely and complete manner including, but not limited to, the local business tax.

(e). If the TPO determines that any employee or representative of the CONSULTANT is not satisfactorily performing his/her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed under this Agreement, the TPO shall so notify the CONSULTANT, in writing. The CONSULTANT shall immediately remove such employee or representative of the CONSULTANT from such assignment.

(f). The CONSULTANT shall not publish any documents or release information regarding this Agreement to the media without prior approval of the TPO.

(g). The CONSULTANT shall certify, upon request by the TPO, that the CONSULTANT maintains a drug free workplace policy in accordance with Section 287.087, *Florida Statutes*. Failure to submit this certification may result in termination of this Agreement.

(h). If the CONSULTANT or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime, such action may result in termination of this Agreement by the TPO. The CONSULTANT shall provide a certification of compliance regarding the public crime requirements set forth in State law upon request by the TPO.

(i). The TPO reserves the right to unilaterally terminate this Agreement if the CONSULTANT refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of Chapter 119, *Florida Statutes*, and other applicable law, and made or received by the CONSULTANT in conjunction, in any way, with this Agreement.

(j). The CONSULTANT shall comply with the requirements of the *Americans with Disabilities Act* and the *Americans with Disabilities Amendment Act*, and any and all related Federal or State laws which prohibits discrimination by public and private entities on the basis of disability.

(k). The TPO will not intentionally award publicly-funded contracts to any CONSULTANT who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8, *United States Code*, Section 1324a(e) Section 274A(e) of the *Immigration and Nationally Act (INA)*. The TPO shall consider the employment by the CONSULTANT of unauthorized aliens, a violation of Section 274A (e) of the *INA*. Such violation by the CONSULTANT of the employment provisions contained in Section 274A (e) of the *INA* shall be grounds for immediate termination of this Agreement by the TPO. The CONSULTANT shall utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CONSULTANT during the

term of this agreement. The CONSULTANT shall expressly require any subcontractors performing work or providing services to likewise utilize the United States Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this agreement.

(l). The CONSULTANT agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the goods and/or services provided to the TPO. The CONSULTANT agrees that any program or initiative involving the work that could adversely affect any personnel involved, citizens, residents, users, neighbors or the surrounding environment will ensure compliance with any and all employment safety, environmental and health laws.

(m). The CONSULTANT shall ensure that all goods and/or services are provided to the TPO after the CONSULTANT has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

(n). If applicable, in accordance with Section 216.347, *Florida Statutes*, the CONSULTANT shall not use funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or State agency.

(o). The CONSULTANT shall advise the TPO in writing if it has been placed on a discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity, or may not transact business with any public entity.

(p). The CONSULTANT shall not engage in any action that would create a conflict of interest in the performance of that actions of any TPO employee or other person during the course of performance of, or otherwise related to, this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, *Florida Statutes*, relating to ethics in government. No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his or her employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section. No member, officer or employee of the TPO during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(q). Pursuant to this Agreement between the CONSULTANT and the TPO, the CONSULTANT may be called upon from time to time to render services to various municipalities, at the expense of the local government(s). This agreement does not preclude the municipality from participating directly with the CONSULTANT in the TPO planning process.

SECTION 23: ACCESS TO RECORDS/AUDIT/PUBLIC RECORDS.

(a). The CONSULTANT shall maintain books, records, documents, time and costs accounts and other evidence directly related to its provision or performance of services under this Agreement. All-time records and cost data shall be maintained in accordance with generally accepted accounting principles. Upon termination of this Agreement, the CONSULTANT shall deliver all records, data, memoranda, models, and equipment of any nature that are in the CONSULTANT's possession or under the CONSULTANT's control and that are the TPO's property or relate to the TPO's business.

(b). The CONSULTANT shall maintain and allow access to the records required under this Section for a minimum period of five (5) years after the completion of the provision or performance goods and/or services under this Agreement and date of final payment for said goods and/or services, or date of termination of this Agreement.

(c). The TPO may perform, or cause to have performed, an audit of the records of the CONSULTANT before or after final payment to support final payment under any Work Order issued hereunder. This audit shall be performed at a time mutually agreeable to the CONSULTANT and the TPO subsequent to the close of the final fiscal period in which goods and/or services are provided or performed. Total compensation to the CONSULTANT may be determined subsequent to an audit as provided for in this Section, and the total compensation so determined shall be used to calculate final payment to the CONSULTANT. Conduct of this audit shall not delay final payment as required by this Section.

(d). In addition to the above, if Federal, State, County, or other entity funds are used for any goods and/or services under this Agreement, the Comptroller General of the United States or the Chief Financial Officer of the State of Florida, or a county or municipality with jurisdiction or any representatives, shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to goods and/or services provided or performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions. In every respect, the CONSULTANT shall ensure compliance with any applicable requirements of governmental agencies including, but not limited to, their pre-audit and post-audit requirements.

(e). In the event of any audit or inspection conducted reveals any overpayment by the TPO under the terms of the Agreement, the CONSULTANT shall refund such overpayment to the TPO within thirty (30) days of notice by the TPO of the request for the refund.

(f). The CONSULTANT agrees to fully comply with all State laws relating to public records. In order to comply with Section 119.0701, *Florida Statutes*, the CONSULTANT must:

(1). Keep and maintain public records required by the TPO to perform the service.

(2). Upon request from the TPO's custodian of public records, provide the public with a copy of the public records requested or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, 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 for the duration of the term of this Agreement and following completion of this Agreement if the CONSULTANT does not transfer the records to the public TPO.

(4). Upon completion of this Agreement, transfer, at no cost, to the TPO all public records in possession of the CONSULTANT or keep and maintain public records required by the TPO to perform the service. If the CONSULTANT transfers all public records to the TPO upon completion of this Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of this Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TPO, upon request from the TPO's custodian of public records, in a format that is compatible with the information technology systems of the TPO.

(5). If the CONSULTANT does not comply with a public records request, the TPO shall enforce any and all Agreement provisions in accordance with this Agreement and the CONTRACTOR shall be subject to all rights and remedies of the TPO and the public under controlling State law.

(6). A request to inspect or copy public records relating to this Agreement must be made directly to the TPO. If the TPO does not possess the requested records, the TPO shall immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the records to the TPO or allow the records to be inspected or copied within a reasonable time. Failure by the CONSULTANT to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of this Agreement by the TPO. The CONSULTANT shall promptly provide the TPO with a copy of any request to inspect or copy public records in possession of the CONSULTANT and shall promptly provide the TPO with a copy of the CONSULTANT's response to each such request.

(g). The CONSULTANT agrees that if any litigation, claim, or audit is started before the expiration of the record retention period established above, the records shall be retained

until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(h). IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONSULTANT'S (VENDOR'S) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 226-0422, EXT. 20416; PAMELA BLANKENSHIP, 2570 W. INTERNATIONAL SPEEDWAY BLVD. SUITE 100 DAYTONA BEACH FL 32114; PBLANKENSHIP@R2CTPO.ORG.

SECTION 24: CODES AND DESIGN STANDARDS.

(a). All goods and/or services to be provided for performed by the CONSULTANT shall, at a minimum, be in conformance with commonly accepted industry and professional codes and standards, standards of the TPO to include, but not be limited to, the contractual terms and conditions posted on the TPO's Web site, and the laws of any and all Federal, State and local regulatory agencies or which, otherwise, have jurisdiction over the goods and/or services.

(b). The CONSULTANT shall be responsible for keeping apprised of any changing laws, applicable to the goods and/or services to be performed under this Agreement.

SECTION 25: ASSIGNABILITY.

(a). The CONSULTANT shall not sublet, assign or transfer any interest in this Agreement without written TPO approval, which shall not be unreasonably withheld, except that CONSULTANT may assign its right to collect payment as required by lender agreements in accordance with normative business practices. When approved by the TPO, written notice of such assignment or transfer shall be furnished promptly to the TPO.

(b). The CONSULTANT agrees to reasonably participate in the contractual "piggybacking" programs pertinent to local governments if authorized by law.

SECTION 26: SUBCONSULTANTS.

(a). Any CONSULTANT-proposed subconsultants shall be submitted to the TPO for written approval prior to the CONSULTANT entering into a subcontract. Subconsultant information shall include, but not be limited to, State registrations, business address, occupational license tax proof of payment, and insurance certifications.

(b). The CONSULTANT shall coordinate the provision of goods and/or services and work product of any TPO approved subconsultants, and remain fully responsible for such goods and/or services and work under the terms of this Agreement.

(c). Any subcontract shall be in writing and shall incorporate this Agreement and require the subconsultants to assume performance of the CONSULTANT's duties commensurately with the CONSULTANT's duties to the TPO under this Agreement, it being understood that nothing herein shall in any way relieve the CONSULTANT from any of its duties under this Agreement. The CONSULTANT shall provide the TPO with executed copies of all subcontracts.

(d). The CONSULTANT shall reasonably cooperate at all times with the TPO and other TPO consultants and professionals.

(e). There are no subconsultants approved by the TPO at the inception of the Agreement.

SECTION 27: CONTROLLING LAWS/VENUE/INTERPRETATION.

(a). This Agreement is to be governed by the laws of the State of Florida.

(b). Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in Volusia County, Florida.

(c). This Agreement is the result of bona fide arm's length negotiations between the TPO and the CONSULTANT and all parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.

SECTION 28: FORCE MAJEURE.

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, terrorism, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 29: EXTENT OF AGREEMENT/INTEGRATION/AMENDMENT.

(a). This Agreement, together with the exhibits, constitutes the entire integrated Agreement between the TPO and the CONSULTANT and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

(b). This Agreement may only be amended, supplemented or modified by a formal written amendment.

(c). Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

SECTION 30: NOTICES.

(a). Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section.

(b). For the present, the parties designate the following as the representative places for giving of notice, to-wit:

For the TPO:

River to Sea TPO
2570 W. International Speedway Blvd., Suite 100
Daytona Beach, FL 32114

For the CONSULTANT:

[INSERT CONSULTANT INFORMATION]

(c). Written notice requirements of this Agreement shall be strictly construed and such requirements are a condition precedent to pursuing any rights or remedies hereunder. The CONSULTANT agrees not to claim any waiver by TPO of such notice requirements based upon TPO having actual knowledge, implied, verbal or constructive notice, lack of prejudice or any other grounds as a substitute for the failure of the CONSULTANT to comply with the express written notice requirements herein. Computer notification (e-mails and message boards) shall not constitute proper written notice under the terms of the Agreement.

SECTION 31: WAIVER.

The failure of either party to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the party hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

SECTION 32: NO GENERAL TPO OBLIGATION.

In no event shall any obligation of the TPO under this Agreement be or constitute a general obligation or indebtedness of the TPO, but shall be payable solely from legally available revenues and funds and the CONSULTANT shall have no right to impose the levy of ad valorem taxation by the TPO.

SECTION 33: EXHIBITS.

Each exhibit referred to and attached to this Agreement is an essential part of this Agreement. The exhibits and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

SECTION 34: CAPTIONS.

The Section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any provision of this Agreement.

SECTION 35: SEVERABILITY/CONSTRUCTION.

(a). If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.

(b). All provisions of this Agreement shall be read and applied *in para materia* with all other provisions hereof.

SECTION 36: ALTERNATIVE DISPUTE RESOLUTION (ADR).

(a). In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust any alternative dispute resolution procedures reasonably imposed by the TPO prior to filing suit or otherwise pursuing legal remedies.

(b). The CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration to the TPO in alternative dispute resolution procedures or which the CONSULTANT had knowledge and failed to present during the TPO procedures.

(c). In the event that TPO procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes

through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

SECTION 37: COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: the TPO through its TPO's local governing board, taking action on this ____ day of _____, 2019, and the CONSULTANT signing by and through its duly authorized corporate officers having the full and complete authority to execute same.

SIGNATURE BLOCKS FOLLOW:

RIVER TO SEA TPO

CONSULTANT

ATTEST:

By: _____

Lois Bollenback, TPO Executive Director

Authorized Corporate Signatory
Date: _____

ATTEST:

ATTEST:

Colleen Nicoulin, AICP, RSP
TPO Sr. Transportation Planner/Project Manager

Approved as to Form and Legality:

Lonnie Groot, TPO Attorney

EXHIBIT "A"

SCOPE OF SERVICES

[INSERT SCOPE OF SERVICES]

EXHIBIT "B"

(RATES OF COMPENSATION)

A. PURPOSE

This Exhibit defines the limits and method of compensation to be made to the CONSULTANT for the completion of services. It also describes the method by which payments will be made.

B. COMPENSATION

For satisfactory performance of authorized services described in Exhibit A of this Agreement, the R2CTPO agrees to pay the CONSULTANT fees and other compensation computed in accordance with one or a combination of the methods outlined below, as specified in an approved Task Work Order:

[INSERT RATES OF COMPENSATION]

INVOICING PROCEDURE

Progress payments will be made to the CONSULTANT as progress reports and invoices are submitted to and approved by the R2CTPO Project Manager. The progress reports and invoices will be based on a percent complete of the total project, supported by delivery of products completed to date.

The R2CTPO will render approval or disapproval of services.

The R2CTPO reserves the right to withhold payments for work not completed, or work completed unsatisfactorily, or work that is deemed inadequate or untimely by the R2CTPO. Any payment withheld will be released and paid to the CONSULTANT when work is subsequently performed.

The R2CTPO shall withhold ten (10) percent of the total contract price to be paid to the CONSULTANT as a Final Payment only after delivery and acceptance of the final products by the R2CTPO.

C. PROJECT CLOSEOUT

1. Final Audit

If requested, the CONSULTANT will permit the R2CTPO to perform or have performed, an audit of records of the CONSULTANT to support the compensation paid the CONSULTANT. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event that funds paid to the CONSULTANT under this Agreement are subsequently properly disallowed by the R2CTPO because of accounting errors or charges not in conformity with this Agreement, the CONSULTANT agrees that such disallowed costs are due to the R2CTPO upon demand. Further, the R2CTPO will have the right to deduct from any payment due the CONSULTANT under any other contract between the R2CTPO and the CONSULTANT an amount sufficient to satisfy any amount due the R2CTPO by the CONSULTANT under the Agreement. CONSULTANT will retain all rights to the VTPO website until the agreed-upon balance has been paid in full.

2. Certificate of Completion

Subsequent to the completion of the final audit, a certificate of completion will be prepared for execution by both parties stating the total compensation due the CONSULTANT, the amount previously paid, and the difference.

Upon execution of the certificate of completion, the CONSULTANT will submit either a termination invoice for an amount due or a refund to the R2CTPO for the overpayment, provided the net difference is not zero.

EXHIBIT "C"
River to Sea Transportation Planning Organization
TASK WORK ORDER FORM

DATE:

TASK ORDER NO.:

PROJECT:

CONSULTANT:

Execution of this Task Order by the River to Sea Transportation Planning Organization (TPO) shall serve as authorization of CONSULTANT to provide for the above project, professional services as set out in the documents (Exhibit A, Exhibit B, and Exhibit C) which are attached and made a part hereof.

The CONSULTANT shall provide said services pursuant to this Task Order, its attachment(s) and the Professional Consulting Services Agreement of (Date), between the TPO and CONSULTANT which is incorporated herein by reference as if it had been set out in its entirety. Whenever this Task Order conflicts with said Agreement, the Agreement shall prevail.

TIME FOR COMPLETION: The following Task authorized by the Task Order shall be completed by [DATE] from the notice to proceed.

COMPENSATION: The TPO shall compensate the CONSULTANT a negotiated fixed fee in the amount of [____], paid based on % of completion, for the service required under this Task Order. The CONSULTANT shall perform all Task and/or provide all goods as required by this Task Order, but, in no event, shall the CONSULTANT be paid more than the fee set forth above.

ATTACHMENTS:

Exhibit A: Scope of Services

Exhibit B: Project Budget

Exhibit C: Project Schedule

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this _____ day of _____, 2019 for the purposes stated herein.

RIVER TO SEA TPO

ATTEST:

Lois Bollenback,
TPO Executive Director

Date: _____

ATTEST:

Colleen Nicoulin, AICP, RSP
TPO Sr. Transportation Planner-Project Manager

ATTEST:

Julie Adamson, CPA
TPO Chief Financial Officer

CONSULTANT

By: _____
Authorized Corporate Signatory

Date: _____

ATTEST:

Authorized Corporate Signatory