

**RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION AGREEMENT
FOR JANITORIAL SERVICES**

THIS AGREEMENT made and entered into this 1st day of February, 2020 by and between the River to Sea Transportation Planning Organization, an agency of the State of Florida organized and operating pursuant to Section 339.175, *Florida Statutes*, whose address is 2570 West International Speedway Boulevard, Suite 100, Daytona Beach, Florida 32114, hereinafter referred to as the "TPO", and _____ d/b/a _____, whose principal corporate and local address is _____, hereinafter referred to as the "CONTRACTOR". The TPO and the CONTRACTOR are collectively referred to herein as the Parties.

WITNESSETH:

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

WHEREAS, the CONTRACTOR hereby warrants and represents to the TPO that it is competent and otherwise able to provide high quality services to the TPO; and

WHEREAS, all TPO promulgated bid documents pertaining to procurement activities relating to this matter and all submissions submitted by the CONTRACTOR 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 CONTRACTOR 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, the CONTRACTOR 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 "CONTRACTOR" 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.

(b). The CONTRACTOR acknowledges that the TPO may retain other service providers to provide the same services for TPO projects. The CONTRACTOR acknowledges that the TPO, at the TPO's option, may request proposals from the CONTRACTOR and the other service providers

for TPO projects. The TPO reserves the right to select which service provider shall provide services for the TPO.

(c). The CONTRACTOR agrees to provide and ensure coordination between services providers.

(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 CONTRACTOR certify that they are authorized to bind the CONTRACTOR 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. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Agreement.

(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). The CONTRACTOR hereby guarantees the TPO that all work and all material, supplies, services and equipment 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 CONTRACTOR (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 CONTRACTOR is to be and shall remain forever an independent CONTRACTOR with respect to all services performed under this Agreement.

(j). Persons employed by the CONTRACTOR in the provision and performance of the 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 services furnished by the CONTRACTOR not specifically provided for herein shall be honored by the TPO.

SECTION 2: SCOPE OF SERVICES.

(a). The CONTRACTOR shall provide the services as generally set forth, described in Exhibit "A" to this Agreement.

(b). The CONTRACTOR shall safely, diligently, and in a professional and timely manner perform, with its own equipment and assets, and provide services included in this Agreement.

(c). Unless modified in writing by the parties hereto, the duties of the CONTRACTOR shall not be construed to exceed the provision of the services pertaining to this Agreement.

SECTION 3: CONTRACTOR UNDERSTANDING OF SERVICES REQUIRED; RESPONSIBILITIES.

(a). Execution of this Agreement by the CONTRACTOR is a representation that the CONTRACTOR is familiar with the services to be provided and/or performed and with local conditions. The CONTRACTOR shall make no claim for additional time or money based upon its failure to comply with this Agreement. The CONTRACTOR has informed the TPO, and hereby represents to the TPO, that it has extensive experience in performing and providing the services described in this Agreement and that it is well acquainted with the work conditions.

(b). The CONTRACTOR shall be responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, safety, and the coordination of all services furnished by the CONTRACTOR under this Agreement as well as the conduct of its staff, personnel, employees and agents.

(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 services provided by the CONTRACTOR under the terms of this Agreement.

SECTION 4: TPO RIGHTS AND RESPONSIBILITIES.

(a). The TPO shall reasonably cooperate with the CONTRACTOR in a timely fashion at no cost to the CONTRACTOR 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.

(c). The TPO shall examine all of the CONTRACTOR's services and indicate the TPO's approval or disapproval within a reasonable time.

(d). The TPO shall give written notice to the CONTRACTOR whenever the TPO's designated representative knows of a development that affects the services provided and

performed under this Agreement, timing of the CONTRACTOR's provision of services, or a defect or change necessary in the services of the CONTRACTOR.

(e). 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 CONTRACTOR based upon the quality of work of the CONTRACTOR.

(f). The TPO shall be entitled to recover any and all legal costs including, but not limited to, 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 CONTRACTOR in carrying out the duties and responsibilities deriving from this Agreement.

(g). The failure of the TPO 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 TPO hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

(h). Neither the TPO's review, approval or acceptance of, nor payment for, any of the 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 CONTRACTOR 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 CONTRACTOR's negligent or wrongful provision or performance of any of the services furnished under this Agreement.

SECTION 5: COMPENSATION.

(a). For the services set forth in Exhibit "A" of this Agreement, the CONTRACTOR shall be paid the sum of [REDACTED] dollars (\$ [REDACTED]) per month.

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

SECTION 6: 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 CONTRACTOR will be notified of any disputable items contained in invoices submitted by the CONTRACTOR within fifteen (15) days of receipt by the TPO with an explanation of the deficiencies.

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

(d). Each invoice shall reference this Agreement and billing period.

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

(f). Invoices shall be forwarded directly to:

Julie Adamson
Chief Financial Officer
River to Sea Transportation Planning Organization
2570 West International Speedway Boulevard
Suite 100
Daytona Beach, Florida 32114

SECTION 7: COMMENCEMENT/IMPLEMENTATION; TERM.

(a). The CONTRACTOR shall commence the provision of services as described in this Agreement upon execution of this Agreement by the TPO. Payment for services shall be prorated for the initial partial month as may be necessary.

(b). The initial term of this Agreement shall be for a period ending January 31, 2023.

(c). After the initial term, this Agreement shall be automatically renewed on an annual basis for a maximum of two (2) years for periods commencing on February 1 of each year subject to the option of the TPO. If the CONTRACTOR demonstrates a material change in wages or the costs of materials, it may seek a modification in the compensation at the time of a renewal; provided, however, that the sole remedy that the CONTRACTOR may exercise if the TPO does not agree with the continuing rate of compensation is providing the TPO with a written notice of termination sixty (60) days prior to the automatic renewal.

(d). Should the TPO not wish to not have this Agreement automatically renewed, the TPO shall provide written notice sixty (60) days prior to the automatic renewal. Further, should the TPO not renew its current lease for its current offices, the TPO may terminate this Agreement effective March 31, 2023 by providing the CONTRACTOR with such notice as the TPO may be able to provide under the circumstances.

SECTION 8: DESIGNATED REPRESENTATIVES.

(a). The TPO designates the TPO Chief Financial Officer to represent the TPO in all matters pertaining to and arising from the work and the performance of this Agreement.

(b). The TPO's designated representative, shall examine the services provided by the CONTRACTOR and render decisions indicating the TPO's approval or disapproval.

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

Julie Adamson
Chief Financial Officer
River to Sea Transportation Planning Organization
2570 West International Speedway Boulevard, Suite 100
Daytona Beach, Florida 32114

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

TBD

SECTION 9: TERMINATION/SUSPENSION OF AGREEMENT.

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

(1). If, in the TPO's opinion, adequate services are not being provided by the CONTRACTOR; or

(2). If, in the TPO's opinion, the quality of the services provided by the CONTRACTOR 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 CONTRACTOR has not corrected such deficiencies in a timely manner as reasonably determined by the TPO; or

(3). The CONTRACTOR or any employee or agent of the CONTRACTOR 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 CONTRACTOR; or

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

(5). The CONTRACTOR violates the Standards of Conduct provisions herein or any provision of Federal, State or local law or any provision of the TPO's Code of Conduct.

(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 CONTRACTOR requesting that the CONTRACTOR show cause why the Agreement 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 CONTRACTOR to be in default, and may then immediately terminate this Agreement in progress under this Agreement.

(c). In the event that this Agreement is terminated for cause and it is later determined that the cause does not exist, then this Agreement 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 CONTRACTOR.

SECTION 10: TERMINATION BY CONTRACTOR FOR CAUSE.

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

(b). In the event of the cause described in Subsection (a), the CONTRACTOR 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 CONTRACTOR within fifteen (15) days of the receipt by the TPO of said show cause notice, then the CONTRACTOR may consider the TPO to be in default, and may immediately terminate this Agreement.

SECTION 11: TERMINATION BY THE TPO WITHOUT CAUSE.

(a). Notwithstanding any other provision of this Agreement, the TPO shall have the right at any time to terminate this Agreement in its entirety without cause, if such termination is deemed by the TPO to be in the public interest, in writing of deficiencies or default in the performance of its duties under the Agreement and the CONTRACTOR shall have ten (10) days to correct same or to request, in writing a hearing.

(b). Failure of the CONTRACTOR to remedy said specified items of deficiency or default in the notice by either the TPO's designated representative within ten (10) days of receipt of such notice of such decisions, shall result in the termination of the Agreement, and the TPO shall be relieved of any and all responsibilities and liabilities under the terms and provisions of the Agreement.

(c). The TPO shall have the right to terminate this Agreement without cause with a sixty (60) day written notice to the CONTRACTOR. The TPO reserves the right to terminate any

Agreement for cause with a five (5) day written notice to the CONTRACTOR. Notice shall be served to the parties as specified in the Agreement.

(d). In the event that this Agreement is terminated, the TPO shall identify any specific services to be continued to completion pursuant to the provisions of this Agreement.

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

SECTION 12: PAYMENT IN THE EVENT OF TERMINATION.

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

SECTION 13: ACTION FOLLOWING TERMINATION.

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

SECTION 14: SUSPENSION.

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

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

SECTION 15: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION.

The CONTRACTOR 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 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 CONTRACTOR, 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.

SECTION 16: INDEMNITY AND INSURANCE.

(a). To the fullest extent permitted by law, the CONTRACTOR shall indemnify, hold harmless and defend 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, attorneys 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 in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of the CONTRACTOR, its agents, servants, officers, officials, employees, or subcontractors. Additionally, the CONTRACTOR accepts responsibility for all damages resulting in any way related to the performance of work.

(b). In accordance with Section 725.06, *Florida Statutes*, adequate consideration has been provided to the CONTRACTOR 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 CONTRACTOR or its agents or subcontractors, 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 CONTRACTOR or its agents or subcontractors, under Workers Compensation acts, disability benefit acts, or other employee benefit acts.

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

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

SECTION 17: INSURANCE.

(a). The CONTRACTOR 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 CONTRACTOR shall provide Worker’s Compensation for all employees. The limits will be statutory limits for Worker’s Compensation insurance.

(2). Comprehensive General Liability: The CONTRACTOR 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 **\$1,000,000** Combined Single Limit (CSL) or its equivalent.

(3). Comprehensive Automobile Liability: The CONTRACTOR shall provide complete coverage for owned and non-owned vehicles for limits not less than **\$1,000,000** CSL or its equivalent.

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

(c). The CONTRACTOR shall provide Certificates of Insurance to the TPO evidencing that all such insurance is in effect prior to work being performed under this Agreement. These Certificates of Insurance shall become part of this Agreement. Neither approval by the TPO nor failure to disapprove the insurance furnished by a CONTRACTOR shall relieve the CONTRACTOR of the CONTRACTOR’s full responsibility for performance of any obligation including the CONTRACTOR’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 CONTRACTOR shall, as soon as the CONTRACTOR 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 CONTRACTOR has replaced the unacceptable insurer with insurance acceptable to the TPO, the CONTRACTOR 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 CONTRACTOR shall furnish Certificate of Insurance directly to the TPO's designated representative. The certificates shall clearly indicate that the CONTRACTOR 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 CONTRACTOR. There are no third party beneficiaries to this Agreement.

(h). The CONTRACTOR is an independent CONTRACTOR 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 18: STANDARDS OF CONDUCT.

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

(b). The CONTRACTOR 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 CONTRACTOR hereby certifies that no undisclosed 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 CONTRACTOR, or any interest in property that the CONTRACTOR may have. The CONTRACTOR 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 CONTRACTOR shall ensure that all taxes due from the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, in writing. The CONTRACTOR shall immediately remove such employee or representative of the CONTRACTOR from such assignment.

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

(g) The CONTRACTOR shall certify, upon request by the TPO, that the CONTRACTOR maintains a drug free workplace policy in accordance with Section 287.0878, *Florida Statutes* and is not a vendor that is disqualified from providing services to the TPO under any statutory provision. Failure to submit this certification may result in termination of this Agreement.

(h). If the CONTRACTOR or an affiliate is placed on the convicted vendor list following a conviction for a public entity crime or is a vendor which is otherwise prohibited from providing services to the TPO, such action may result in termination of this Agreement by the TPO. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR in conjunction, in any way, with this Agreement.

(j). The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR of unauthorized aliens, a violation of Section 274A (e) of the *INA*. Such violation by the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR during the term of this Agreement. The CONTRACTOR 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 CONTRACTOR agrees to comply with Federal, State, and local environmental, health, and safety laws and regulations applicable to the services provided to the TPO. The CONTRACTOR 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 CONTRACTOR shall ensure that all services are provided to the TPO after the CONTRACTOR has obtained, at its sole and exclusive expense, any and all permits, licenses, permissions, approvals or similar consents.

(n). The CONTRACTOR 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.

SECTION 19: ACCESS TO RECORDS/AUDIT/PUBLIC RECORDS.

(a). The CONTRACTOR agrees to fully comply with all State laws relating to public records. In order to comply with Section 119.0701, *Florida Statutes*, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR or keep and maintain public records required by the TPO to perform the service. If the CONTRACTOR transfers all public records to the TPO upon completion of this Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of this Agreement, the CONTRACTOR 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 CONTRACTOR 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 CITY 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 CONTRACTOR of the request, and the CONTRACTOR must provide the records to the TPO or allow the records to be inspected or copied within a reasonable time. Failure by the CONTRACTOR 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 CONTRACTOR shall promptly provide the TPO with a copy of any request to inspect or copy public records in possession of the CONTRACTOR and shall promptly provide the TPO with a copy of the CONTRACTOR's response to each such request.

(b). The CONTRACTOR 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.

(c). **IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PAMELA BLANKENSHIP; 386-226-0422 (EXTENSION 20416); EMAIL ADDRESS: PBLANKENSHIP@R2CTPO.ORG.**

SECTION 20: ASSIGNABILITY; SUBCONTRACTORS.

(a). The CONTRACTOR shall not sublet, assign, subcontract or transfer any interest in this Agreement or part of this Agreement, or claims for the money due or to become due out of this Agreement to a bank, trust company, or other financial institution without written TPO approval. When approved by the TPO, written notice of such assignment or transfer shall be furnished promptly to the TPO.

(b). The CONTRACTOR agrees to reasonably participate in the contractual "piggybacking" programs pertinent to Florida governments.

SECTION 21: 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 and for Volusia County, Florida.

(c). This Agreement is the result of bona fide arm's length negotiations between the TPO and the CONTRACTOR 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 22: 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 23: EXTENT OF AGREEMENT; INTEGRATION; AMENDMENT.

(a). This Agreement, together with the exhibit, constitutes the entire integrated Agreement between the TPO and the CONTRACTOR 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 exhibit 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 24: 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:

Lois Bollenback
Executive Director
River to Sea Transportation Planning Organization
2570 West International Speedway Boulevard, Suite 100
Daytona Beach, Florida 32114

For the CONTRACTOR:

TBD

(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 CONTRACTOR 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 CONTRACTOR 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 25: WAIVER.

The failure of the TPO 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 TPO hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

SECTION 26: 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.

SECTION 27: EXHIBITS.

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

SECTION 29: 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 29: 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 30: 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 CONTRACTOR 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 CONTRACTOR 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 31: 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 governing board taking action on this ___ day of January, 2020, and the CONTRACTOR signing by and through its duly authorized corporate officers having the full and complete authority to execute same.

RIVER TO SEA TPO

By: _____
Lois Bollenback, Executive Director
Date: _____

ATTEST:

Julie Adamson
Chief Financial Officer
Date: _____

For the use and reliance of the TPO only.
Approved as to form and legal sufficiency.

Lonnie Groot, TPO Attorney

TBD

By: _____
TBD
Date: _____

Attest

By: _____
TBD
TBD

EXHIBIT "A"

SCOPE OF SERVICES/WORK SCHEDULE

To be inserted upon contract execution. Currently a separate attachment.

EXHIBIT "B"

MANDATORY TERMS AND CONDITIONS

(NOT TO LIMIT ANY OTHER REQUIREMENTS OF THIS AGREEMENT)

(a). The TPO is required to comply and require its contractors and subvendors to comply with all terms and conditions of the agreements with the Florida Department of Transportation and all Federal, state, and local laws and regulations. Notwithstanding the foregoing specific references to specific provisions of law and other requirements, the CONTRACTOR shall adhere to all provisions of law required by grants to or funding of the TPO and, further.

(b). The CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR agrees to adhere to the specific obligations set forth in this Section.

(c). During the performance of this contract, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows as it pertains to Title VI Assurances:

(1). Compliance with Regulations: The CONTRACTOR 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 CONTRACTOR, 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 subvendor, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3). Solicitations for subvendors, including Procurements of Materials and Equipment: In all solicitations made by the CONTRACTOR, either by competitive

bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor supplier shall be notified by the CONTRACTOR of the CONTRACTOR'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 CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the 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 CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information the CONTRACTOR shall so certify to the Florida Department of Transportation, 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 CONTRACTOR'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:

- (i). Withholding of payments to the CONTRACTOR under the contract until the CONTRACTOR complies; and/or
- (ii). Cancellation, termination or suspension of the contract, in whole or in part.

(6). Incorporation of Provisions: The CONTRACTOR 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 CONTRACTOR shall take such action with respect to any subvendor 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 CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-CONTRACTOR or supplier as a result of such direction, the CONTRACTOR may request the Florida Department of

Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

(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 vendors, 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).

(d) During the performance of this Agreement, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows as it pertains to disadvantaged businesses:

(1). 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.

(2). Consistent with 49 *Code of Federal Regulations* Part 26.13(b), the CONTRACTOR, and any and all sub-recipients or subvendors, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR 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 CONTRACTOR 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.

(e). During the performance of this Agreement, the CONTRACTOR shall for itself, its assignees and successors in interest agrees to the following:

(1) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or

consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, *Florida Statutes*, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

(2) In accordance with Section 287.134, *Florida Statutes*, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.

(3) An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the TPO.

(4) Neither the TPO nor any of its contractors and consultants or their subcontractors and subconsultants shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the MOP or the entities that are part of the TPO during tenure or for two (2) years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the TPO, the TPO, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the TPO or the locality relating to such contract, subcontract or arrangement. The TPO shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors and consultants to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the TPO or of the locality during his or her tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this paragraph shall not be applicable to any agreement between the TPO and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

(5). No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.