

**RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION AGREEMENT
FOR EXECUTIVE DIRECTOR RECRUITMENT SERVICES**

THIS AGREEMENT made and entered into this _____ day of September, 2021 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 Strategic Government Resources, Inc., a Texas Corporation, whose principal corporate and local address is P.O Box 1642, Keller, Texas 76244, 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 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 Executive Recruitment Services, in accordance with the Scope of Services attached hereto as Exhibit "A" and made part of this agreement; 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 service 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 and are incorporated herein.

(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.

(l). If the CONTRACTOR colludes to engage in the violation of a TPO Purchasing Policy, or a procedure relating thereto, such action shall subject the VENDOR to debarment and any other action authorized by controlling law and shall constitute a breach of contract and default. Under

controlling law, non-Federal entities are subject to the non-procurement debarment and suspension regulations which regulations restrict awards, subawards, and contracts with certain Parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. This Agreement is subject to the processes and procedures of the controlling regulations relating to debarment. Further, the CONTRACTOR certifies, and agrees to execute all certifications required by the TPO that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency, or, if unable to certify to any of the statements required in a certification, to provide an adequate explanation.

(m). In addition to all other requirements of this Agreement, in accordance with Section 216.347, Florida Statutes, the CONTRACTOR shall not use funds provided by the TPO for the purpose of lobbying the Legislature, the judicial branch or a State agency

(n). The CONTRACTOR hereby acknowledges that it must comply with Section 20.055(5), Florida Statutes, which, among other things, establishes the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to that statute which relates to inspector general inquiries and the like and the CONTRACTOR understands and shall comply with the requirements of that statute.

SECTION 2: SCOPE OF SERVICES.

(a). The CONTRACTOR shall provide the services as generally set forth, described in Exhibit "A" to this Agreement. The TPO may revise the scope of services or order for goods set forth in a work order. 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 work, goods, and/or services, including all direct and indirect costs of whatever nature, and all adjustment to the CONTRACTOR's schedule.

(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.

(e). Correction of errors or omissions in its services or goods provided to the TPO by the CONTRACTOR shall not be reimbursable or compensable by the TPO.

(f). The CONTRACTOR is responsible for the professional quality, accepted standards, technical accuracy, neatness of appearance of employees, employee conduct, safety, and the coordination of all goods, work, and/or services furnished to the TPO under this Agreement. If the TPO determines that any employee of the CONTRACTOR, a sub-contractor, or a sub-subcontractor or representative of the any of the aforementioned is not satisfactorily performing his or her assigned duties or is demonstrating improper conduct pursuant to any assignment or work performed in relation to this Agreement, the TPO may notify the CONTRACTOR in writing. The CONTRACTOR shall immediately take corrective action, or if the TPO so directs, the CONTRACTOR shall immediately remove such employee or representative from such assignment or the work.

(g). The CONTRACTOR is responsible for the conduct of its staff, personnel, employees, agents, sub-contractors, and sub-subcontractors. The CONTRACTOR shall supply a list of all employee working days, times, and assignments within two hours of the TPOs request for such information, and the TPO may also request employee names, addresses, and drivers' licenses;

(h). The CONTRACTOR shall submit a complete written report to the TPO within twenty-four (24) hours of the date of any incident resulting in damage or injury or which is likely to result in a claim of damage or injury either to the TPO or the CONTRACTOR.

(i). The CONTRACTOR shall ensure that all taxes or fees due from the CONTRACTOR, any sub-contractor, or a sub-subcontractor are or have been timely paid in a complete manner, but not limited to all required business tax receipts.

(j). Upon request by the TPO, the CONTRACTOR shall certify to the TPO and any state or

federal agency as determined by the TPO, that the CONTRACTOR, all sub-contractors, and all sub-subcontractors, maintain a drug free workplace in accordance with Section 287.0878, Florida Statutes. Failure to submit this certification and allow TPO inspection to ascertain the correctness of the certification may result in Agreement termination.

(k). Refund any overpayment by the TPO, revealed through an audit or TPO inspection of its or the CONTRACTOR's records. Such refund for an overpayment shall be made to the TPO within thirty (30) days of the request for refund.

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 a Not-to-Exceed sum of \$24,900 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 CONTRACTOR except as specifically set forth herein. Advertising expenses of the CONTRACTOR will be an acceptable expense.

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 and provide a detailed summary of services provided during the billing period. No services shall be billed until the completion of each particular task as set forth in Exhibits "A" and "B."

(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:

Walter Lacey
Accounting Manager
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.

(b). The term of this Agreement shall be for a period BEGINNING on September 1, 2021. All services must be completed by January 31, 2022, but this completion date may be extended with the approval of both parties.

SECTION 8: DESIGNATED REPRESENTATIVES.

(a). The TPO designates the TPO Accounting Manager 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:

Walter Lacey
Accounting Manager
River to Sea Transportation Planning Organization
2570 West International Speedway Boulevard, Suite 100
Daytona Beach, Florida 32114
wlacey@R2CTPO.org

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

JJ Peters
President of Executive Recruitment
Strategic Government Resources
P.O. Box 1642
Keller, TX 76244
JJPeters@governmentresource.com

(e). Either party may, from time to time, unilaterally change its designated representative or contact information by giving notice to the other party.

SECTION 9: TERMINATION/SUSPENSION OF AGREEMENT.

(a). The TPO may terminate this Agreement for convenience, or suspend the CONTRACTOR's performance hereunder, 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, provisions of this Agreement, 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.

(d). 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.

(e). Upon receipt of written notice from the TPO that the CONTRACTOR's provision of services hereunder are to be resumed, upon mutual agreement of both parties, the CONTRACTOR shall continue to provide the services to the TPO.

(f). In the event that this Agreement is terminated or suspended, the TPO shall identify the reason why and any specific services to be continued to completion pursuant to the provisions of this Agreement.

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, or if the TPO is unable to agree to hire a candidate for the position of Executive Director after two complete searches as described herein by the CONTRACTOR.

(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.

(c). In the event that this Agreement is terminated, the CONTRACTOR shall identify the reasons why and any specific services to be continued to completion pursuant to the provisions of this Agreement.

SECTION 11: 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 12: 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 13: 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 14: INDEMNITY.

(a). To the fullest extent permitted by law, the CONTRACTOR, and each sub-contractor and sub-subcontractor, shall indemnify, hold harmless and defend the TPO, its agents, servants, officers, officials, attorneys, and employees, or any of them, from and against any and all claims, damages, losses, costs, attorneys' and paralegals' fees, 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, reckless, intentional, or misconduct of the CONTRACTOR, its agents, servants, officers, officials, employees, or subcontractors, including but not limited to wrongful or inappropriate supervision or training, failure to use or implement required or appropriate safety measures, invasion of privacy, or violation of federal, state, or local law, rule, or governmental regulation or policy. Additionally, the CONTRACTOR accepts responsibility for all damages resulting in any way related to the performance of work. This indemnification is capped at \$2 million dollars. No indemnification by the CONTRACTOR, a sub-contractor, or a sub-sub-contractor, shall be cumulative with one another with regard to the amount of the indemnification, meaning that the \$2 million cap for the CONTRACTOR's indemnification is not cumulative and is separate from the indemnification for a sub-contractor, and no sub-contractor's indemnification is cumulative with any sub-subcontractor's indemnification. Each entity must provide a separate indemnification which may have a cap of \$2 million each. No indemnification of the TPO shall be delayed based on insurance claims or litigation.

(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. Further, the parties to this Agreement affirm and agree that this Agreement is not a construction, alteration, repair, or demolition contract as set forth in Section 725.06, *Florida Statutes*, and the parties hereto waive any claim or defense asserting the same.

(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*. No design professional of the CONTRACTOR, a sub-contractor, or a sub-subcontractor is required to directly indemnify the TPO only as provided in Section 725.08(1), *Florida Statutes*.

(h). Defense of the TPO. In the event any action or proceeding shall be brought against the TPO by reason of any matter for which the TPO is indemnified hereunder, the CONTRACTOR shall, upon notice from the TPO, at the CONTRACTOR's sole cost and expense, resist and defend the same with legal counsel mutually selected by the CONTRACTOR and the TPO; provided, however, that the CONTRACTOR shall not admit liability in any such matter on behalf of the TPO without the written consent of the TPO and provided, further, that the CONTRACTOR shall not admit liability for, nor enter into any compromise or settlement of, any claim for which it is indemnified hereunder, without the prior written consent of the CONTRACTOR.

(i). Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of the TPO as set forth in Section 768.28, *Florida Statutes*. By executing this Agreement, the CONTRACTOR, and the CONTRACTOR for any sub-contractor and sub-subcontractor, hereby waives any right to seek a claims bill waiving or increasing the limits set forth in Section 768.28, *Florida Statutes*.

(j). All provisions of Section 14. shall survive the termination of this Agreement.

SECTION 15: INSURANCE.

(a). The CONTRACTOR shall obtain or possess and continuously maintain during the term of this Agreement, the following insurance coverage, from a company or companies, 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. These policies of insurance shall cover the CONTRACTOR for any and all claims, demands, and expenses whatsoever, including defense and causes for action for general damages, bodily injury and property damage arising out of or to the extent caused by negligent acts, errors or omissions of the CONTRACTOR. Policies shall include:

(1). Workers Compensation/Employer Liability: The CONTRACTOR shall provide Worker's Compensation for all employees, which meets applicable statutory requirements, and Employer's Liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident, or as required from time to time by Federal and Florida State law, whichever amount shall be higher. 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,

bodily injury (including but not limited to death), property damage, and personal injury and to include, (to specifically include products and completed operations). The limits will not be less than \$2,000,000 Combined Single Limit (CSL) or its equivalent.

(3). Comprehensive Automobile Liability: The CONTRACTOR shall provide complete coverage for owned, hired, and non-owned vehicles for limits not less than \$2,000,000 CSL or its equivalent to comply with the provisions of state law, as the combined single limit for each occurrence for bodily injury and property damage.

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

(c). Insurance Administration.

(1). Occurrence basis. All policies, except workers' compensation, shall be written on an occurrence and not a claims-made basis.

(2). Coverage amounts. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as, in combination, the limits equal or exceed those stated.

(3). Named insured. All policies, except for workers' compensation policies, shall name the TPO as an "additional insured." Each policy which is to be endorsed to add the TPO as an additional insured, shall contain cross-liability wording substantially as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

(4). Evidence of insurance. Certified copies of all insurance policies with the terms/endorsements and designations of "additional insured" are required by this Agreement for each insurance policy required to be obtained by the CONTRACTOR in compliance with this section, along with written evidence of payment of required premiums, shall be filed and continuously maintained with the TPO during the term of Agreement hereunder and prior to commencement of all projects, tasks, or work hereunder. The filing of a certificate of insurance with the TPO shall not be interpreted as being in compliance with the foregoing requirements. The CONTRACTOR shall immediately advise the TPO of any claim or litigation that may result in liability to the TPO.

(5). Cancellation of policies of insurance. All insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior, written notice shall be given to the River to Sea Transportation Planning Organization, or successor hereof, by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same."

(6). Insurance companies. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Florida Insurance Commission, or said Commissioner's successor, or surplus line carriers on the State of Florida Insurance Commissioner's approved list of companies qualified to do business in the State of Florida. All insurance carriers and surplus line carriers shall be rated A+, with a financial quality of VII, or better by A.M. Best Company.

(7). Deductibles. All insurance policies may be written with deductibles, not to exceed Twenty-Five Thousand Dollars (\$25,000) unless approved in advance by the TPO. The CONTRACTOR agrees to indemnify and save harmless the TPO from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

(8). Sub-Contractors. The CONTRACTOR shall require that each and every one of its sub-contractors, and their sub-subcontractors, if any, who perform work related to this Agreement shall carry, in full force and effect, workers' compensation, comprehensive general public liability, and automobile liability insurance coverages of the type which the CONTRACTOR is required to obtain under the terms of this sub-section, with appropriate limits of insurance, all naming the TPO as an additional insured. Copies of sub-contractor insurance policies shall be promptly filed with the TPO by the CONTRACTOR immediately after the signing of a contract between the CONTRACTOR and the sub-contractor or between a sub-subcontractor and a sub-contractor.

(9). If the CONTRACTOR, or a sub-contractor, fails to pay for all insurance due and as required above, the TPO may, but shall not be obligated to, pay the same, and upon written request, the CONTRACTOR shall promptly reimburse the TPO for the cost of said insurance. If the CONTRACTOR does not reimburse the TPO, subject to a 15-day grace period, the CONTRACTOR shall be in material default of this Agreement and, in addition to all other remedies available at law or under this Agreement, the TPO may, but is not obligated to take such measures as the TPO deems appropriate to obtain and pay for such insurance. Upon written request, the CONTRACTOR shall immediately reimburse the TPO for the amount thereof (including all interest imposed by the assessing agency for late or non-payment of insurance and penalties attributable thereto) plus interest, all at the then highest legal rate of interest.

(10). 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). 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*.

(f). 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.

(g). 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.

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

SECTION 16: 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 17: 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. The CONTRACTOR shall prepare and retain all records in accordance with the federal and state requirements, including but not limited to 23 CFR Part 420, 49 CFR Part 18, 49 CFR 18.42, and Chapter 119, *Florida Statutes*.

(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 DEBBIE STEWART; 386-226-0422 (EXTENSION 20425); EMAIL ADDRESS: DSTEWART@R2CTPO.ORG.**

SECTION 18: ASSIGNABILITY; SUBCONTRACTORS.

(a). Notwithstanding other provisions of this Agreement, 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 which may be approved or disapproved by the TPO for any reason and within the total discretion of the TPO. When approved by the TPO, written notice of such assignment or transfer shall be furnished promptly to the TPO. In the event of any subcontracting, assignment, or transfer of work hereunder approved by the TPO, the assignee, transferee, or subcontractor shall be bound to all provisions of this Agreement to the same extent as the CONTRACTOR had the assignment, transfer, or subcontracting not been approved by the TPO. Upon approval by the TPO and execution of a sub-contractor or sub-subcontractor agreement related to the work or project described in this Agreement, a copy of said sub-contract or sub-subcontract shall be immediately provided to the TPO.

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

SECTION 19: 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, or if in federal court in the U.S. District Court, Middle District of Florida, Orlando Division. This Agreement is subject to the governmental home

venue doctrine, and the TPO's home venue is Volusia County. This Section 19. shall survive the termination of this Agreement.

(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 20: 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 21: 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.

(d). Joint Preparation. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

(e). Survivability. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

SECTION 22: NOTICES.

(a). Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery, or by overnight courier by a nationally recognized overnight courier (e.g. – United Parcel Service, Federal Express, or United States Postal Service), addressed to the party for whom it is intended, at the place last specified. 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. Either party may unilaterally change its addressee or address for notice by giving notice to the other party. Overnight courier or hand delivery mail shall be deemed to occur on the date delivered, and mail by certified U.S. mail, shall be deemed delivered within seven (7) days of mailing or as otherwise shown on the certified mail, return receipt card.

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

For the TPO:

Walter Lacey
Accounting Manager
River to Sea Transportation Planning Organization
2570 West International Speedway Boulevard, Suite 100
Daytona Beach, Florida 32114

For the CONTRACTOR:

JJ Peters
President of Executive Recruitment
Strategic Government Resources
P.O. Box 1642
Keller, TX 76244

(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 23: 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 24: 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 25: 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 26: 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 27: 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 28: 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 29: FEDERAL AND STATE TAXES.

The TPO is exempt from payment of the Florida State Sales and Use Taxes. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the TPO, nor is the CONTRACTOR authorized to use the TPO's Tax Exemption Number in securing such materials. The CONTRACTOR shall be responsible for payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect to this Agreement.

SECTION 30: PLEDGING OF THE TPO's CREDIT.

The CONTRACTOR shall not pledge the TPO's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

SECTION 31. REQUIRED FEDERAL DISCLAIMER.

The CONTRACTOR agrees that it shall display the following disclaimer on all reports generated by the CONTRACTOR:

The preparation of this report has been financed in part through grant[s] from the Federal Highway Administration and Federal Transit Administration, U.S. Department of Transportation, under the State Planning and Research Program, Section 505 [or Metropolitan Planning Program, Section 104(f)] of Title 23, U.S. Code. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.

SECTION 38. CLEAN AIR.

The Clean Air requirements apply to all contracts exceeding \$150,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401-7671q. The CONTRACTOR agrees to report each violation to the TPO and agrees that the TPO will, in turn, report each violation as required to assure notification to the FHWA and the FTA and the appropriate EPA regional office. The CONTRACTOR further agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the FHWA or the FTA.

SECTION 39. CLEAN WATER.

If this Agreement is valued at \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1-17387. The CONTRACTOR agrees to report each violation to the TPO and agrees that the TPO will, in turn, report each violation as required to assure notification to the FHWA or the FTA and the appropriate EPA regional office. The CONTRACTOR also agrees to include these requirements in each subcontract or sub-contractor contract, exceeding \$100,000 financed in whole or in part with federal assistance provided by the FHWA or the FTA.

SECTION 40. ENERGY CONSERVATION.

The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§6272-6273 and 6294.

SECTION 41. SEAT BELTS.

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

SECTION 42. REDUCING TEXT MESSAGING WHILE DRIVING.

Pursuant to Executive Order 13513, 74 Fed.Reg. 51225 (Oct. 6, 2009), the CONTRACTOR is encouraged to adopt and enforce policies that ban text messaging while driving.

SECTION 43. CONNECTION WITH AGREEMENT.

As provided by 23 CFR Sec. 1.33, 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 this project shall have, directly or indirectly, a financial or other personal interest, other than his 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.

SECTION 44. NO CLAIM FOR OTHER BENEFITS.

Persons employee by the CONTRACTOR in the provision and performance of the goods and/or services and functions pursuant to this Agreement shall have no claim to a pension, workers' compensation, unemployment compensation, civil service, health insurance, or other employee rights or privileges granted to the TPO's officers, employees, other individuals either by operation of law or by the TPO. This Section 44. shall survive the termination of this Agreement.

SECTION 45. FEDERAL IRS TAX IDENTIFICATION NUMBER.

The CONTRACTOR shall provide to the TPO its Federal Tax ID Number within thirty (30) days of the effective date of this Agreement but in all events prior to having the right to submit an invoice for payment.

SECTION 46: 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 Executive Director Search Committee taking action on this _____ day of September, 2021, and the CONTRACTOR signing by and through its duly authorized corporate officers having the full and complete authority to execute same.

RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION, An agency of the State of Florida organized and operating pursuant to Section 339.175, Florida Statutes

STRATEGIC GOVERNMENT RESOURCES, INC., a Texas Corporation

By: _____
Billie Wheeler, Chairperson

By: _____
Ronald Holifield, President
1117 BOURLAND RD
Keller, TX 76248

Date: _____

Date: _____

ATTEST:

Attest

Walter L. Lacey, CPA
Accounting Manager

By: _____
Melissa Valentine, Secretary

Date: _____

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

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

Paul Gougelman, TPO General Counsel

EXHIBIT "A"

SCOPE OF SERVICES/WORK SCHEDULE

Step 1: Organizational Inquiry and Analysis

Develop Recruitment Plan and Timeline

SGR will meet with the client at the outset of the project to finalize the recruitment plan and timeline. At this time, SGR will also request that the client provide us with photos and information on the community, organization, and position to assist us in drafting the position profile brochure.

Individual Interviews with Key Stakeholders

SGR devotes tremendous energy to understanding your organization's unique culture, environment, and goals to ensure you get the right match for your particular needs. Fully understanding your organizational needs is the most critical part of conducting a successful executive recruitment. In consultation with the Search Committee, SGR will develop a list of individuals to meet with about the position. Individual interviews may include members of the Search Committee, key staff members, peers in other organizations, and/or community leaders to find out more about the position, special considerations, and the political environment. These interviews last approximately 30-60 minutes each and identify issues that may affect the dynamics of the recruitment, as well as develop a composite understanding of the organization's preferences. This process helps with organizational buy-in and will assist us in developing the position profile.

Development of Position Profile Brochure

Following the individual interviews, SGR will develop a draft position profile brochure that is reviewed and revised in partnership with your organization until we are in agreement that it accurately reflects the sought-after leadership and management characteristics.

Step 2: Advertising and Marketing, Communication with Applicants and Prospects

Advertising and Marketing

The Executive Recruiter and client work together to determine the best ways to advertise and recruit for the position. SGR's Servant Leadership e-newsletter, where your position will be announced, reaches nearly 50,000 subscribers in all 50 states. We will also send targeted emails to opt-in subscribers to SGR's Job Alerts. Your position will be posted on SGR's Website, GovernmentResource.com, and on SGR's Job Board, SGRjobs.com. SGR provides a comprehensive social media marketing campaign that includes custom-made graphics and distribution on Facebook, Twitter, Instagram, and LinkedIn. Ads are also typically placed in various state and national publications, targeting the most effective venues for reaching qualified candidates for that particular position.

Communication with Prospects

SGR communicates with interested prospects on ongoing basis during the recruitment process. Outstanding prospects often will not submit a resume until they have done considerable homework on the available position. A significant number of inquiries will be made, and it is essential that the executive search firm be prepared to answer those questions with fast, accurate, and complete information, and in a warm and personal manner. This is one of the first places a prospective candidate will develop an impression about the organization, and it is an area in which SGR excels.

Communication with Active Applicants

Handling the flow of resumes is an ongoing and significant process. On the front end, it involves tracking resumes and promptly acknowledging their receipt. It also involves timely and personal responses to any questions or inquiries. SGR communicates frequently with applicants to ensure they stay enthusiastic and informed about the opportunity. SGR utilizes Google Alerts and sends weekly update emails to active applicants regarding the organization and community.

Step 3: Initial Screening and Review

SGR uses a triage process to identify high-probability, medium-probability, and low-probability candidates. The triage ranking is focused on overall assessment based on interaction with the applicant, qualifications, any known issues regarding previous work experience, and evaluation of cultural fit with the organization.

In contrast with the triage process described above, which focuses on subjective assessment of the resumes and how the candidates present themselves, we also evaluate each candidate to make sure that the minimum requirements of the position are met, and which of the preferred requirements are met. This sifting process assesses how well candidates’ applications fulfill the recruitment criteria outlined in the Position Profile.

Step 4: Search Committee Briefing / Selection of Semifinalist Candidates

At this briefing, SGR will provide a comprehensive progress report and facilitate the selection of up to 12 semifinalists. The presentation will include summary information on the process so far, the candidate pool overall, and any trends or issues, as well as a briefing on each candidate and their credentials. No other firm offers this level of reporting detail and transparency.

Step 5: Evaluation of Semifinalist Candidates

Reviewing resumes is an important and valuable step in the executive recruitment process. However, the simple fact is that resumes can be misleading. They tell you nothing about the individual’s personal qualities or his/her ability to get along with other people. Resumes can also exaggerate or inflate accomplishments or experience. SGR’s responsibility is to go more in- depth than the resume to ensure that those candidates who continue in the process are truly outstanding. SGR’s goal is to have a clear understanding of the person behind the resume and

what makes him/her an outstanding prospect for you. The evaluation of semifinalist candidates includes follow-up when appropriate to ask any questions about underlying issues.

Written Questionnaires

SGR will ask semifinalist candidates to complete a comprehensive written exercise designed to provide greater insight into candidate thought processes and communication styles. SGR’s written instrument is custom designed around the priorities identified by the Search Committee and usually includes questions focusing on key areas of particular interest to the client. This written instrument will be included in the semifinalist briefing book along with cover letters and resumes submitted by the candidates.

Recorded Online Interviews

SGR will ask semifinalist candidates to complete online interviews. This provides a very insightful, efficient and cost-effective way to gain additional insights to utilize in selecting finalists you want to invite for an onsite interview. The recorded online interviews allow the Search Committee to evaluate technological competence, demeanor, verbal communication skills, and on-camera presence. Online interviews also convey to candidates that the organization is using leading edge technology in its business processes and provide an opportunity for the Search Committee to ask candidates questions on specific topics of special interest. Links to view the online interviews are emailed to the Search Committee members for viewing at their convenience prior to selection of finalist candidates.

Media Searches - Stage 1

“Stage 1” of our media search process involves the use of the web-based interface Nexis Diligence™. This platform is an aggregated subscription-based platform that allows access to global news, business, legal, and regulatory content. These media reports at the semifinalist stage have proven helpful by uncovering issues that may not have been previously disclosed by prospective candidates. The recruiter will communicate any “red flags” to the Search Committee immediately upon discovery.

Step 6: Search Committee Briefing / Selection of Finalist Candidates

Prior to this briefing, SGR will provide each member of the Search Committee with a briefing book on the semifinalist candidates. The briefing book includes cover letters, resumes, and completed questionnaires. The link to view the online interviews is emailed separately to Search Committee members. The purpose of this briefing is to facilitate narrowing the list to up to 5 finalists who will be invited for personal interviews.

Step 7: Evaluation of Finalist Candidates

Comprehensive Media Searches - Stage 2

“Stage 2” of our media search process includes the web-based interface Nexis Diligence™ along with Google as a supplementary tool. By utilizing both, we can provide our clients with an enhanced due diligence process to help vet potential candidates in an efficient and comprehensive manner, which reduces the risk of overlooking important information.

The Stage 2 media search consists of a more complex search, which also includes social media platforms, and has proven helpful in analyzing possible adverse news about the candidate by uncovering issues that may not have been previously disclosed by the candidate. The media search gives the Search Committee an overview of the type and extent of press coverage that a candidate has experienced over the course of their career. View a sample media report at: <http://bit.ly/SGRSampleMediaReport>.

Comprehensive Background Investigation Reports

Through SGR's partnership with a licensed private investigation firm, we are able to provide our clients with comprehensive background screening reports that include the detailed information listed below. View a sample background report at: bit.ly/SGRSampleBackgroundReport.

- Social Security number trace
- Address history
- Driving history/motor vehicle records
- Credit report
- Federal criminal search
- National criminal search
- County warrants and warrants for previous 10 years
- Global homeland security search
- Sex offender registry search
- State criminal search (for current and previous states of residence)
- County civil and criminal search (for every county in which candidate has lived or worked) for previous 10 years
- Education verification
- Employment verification (if desired)
- Military verification (if desired)

First Year Game Plan or Other Advanced Exercise

SGR will work with your organization, if desired, to develop an advanced exercise for the finalist candidates. One example of such an exercise is a "First Year Game Plan," a process where finalist candidates are provided with the contact information for elected officials, key staff, and community leaders and then given free rein to make contact with all of them in advance and use those insights to develop a "first year game plan" based on what they know so far.

Feedback is received from the key contacts on their impressions of the finalist candidates from the interactions with the candidates prior to the interviews. This exercise provides the opportunity to evaluate candidates' written and interpersonal communication skills, as well as critical analysis skills.

Step 8: Interview Process

Face-to-Face Interviews

SGR will schedule interviews at a date/time convenient to your organization. This process can be as simple, or as complex, as your organization desires. SGR will help you determine the specifics and assist in developing the interview schedule and timeline. SGR will prepare sample interview questions and will participate throughout the process to make it smooth and efficient.

Stakeholder Engagement

At the discretion of the Search Committee, we will work closely with your organization to engage stakeholders in the recruitment process. Our recommendation is that we design a specific stakeholder engagement process after we learn more about the organization and the community. Different approaches work best in different communities. We will collaborate with your organization to determine which option, or combination of options, will be the most effective for the unique needs of the organization.

- Stakeholder survey (supplemental service, can be provided at an additional cost)
- Interviewing community leaders at the outset of the recruitment;
- Holding a public forum for citizen engagement at the outset of the recruitment;
- Community leader reception;
- Meet and greet;
- Search Committee and key community leader dinner meeting;
- “Round Robin” forum meetings with various community groups during a multi-day interview process.

Deliberations

SGR will facilitate a discussion about the finalist interviews and assist the Search Committee in making a hiring decision or in deciding whether to bring back one or more candidates for a second interview.

Reference Checks

SGR uses a progressive and adaptive automated reference check system to provide insights on candidates’ soft skills from a well-rounded group of references. References may include elected officials, direct supervisors, direct reports, internal organizational peers, professional peers in other organizations, and civic leaders. SGR’s reference check platform is anonymous, which is proven to encourage more candid and truthful responses, in turn providing organizations with more meaningful and insightful information on candidates. SGR provides a written summary report to the organization once all reference checks are completed. The timing of reference checks may vary depending on the specific search process and situation. If the names of the finalists are made public prior to interviews, SGR will typically contact references prior to the interview process. If the names of the finalists are not made public prior to interviews, SGR will typically wait until the organization has selected its top candidate before calling references in order to protect candidate confidentiality.

Step 9: Negotiations and Hiring Process

Determine the Terms of an Offer

Upon request, SGR will provide appropriate employment agreement language and other helpful information to assist you in determining an appropriate offer to extend to your candidate of choice.

Negotiate Terms and Conditions of Employment

SGR will assist to whatever degree you deem appropriate in conducting negotiations with the chosen candidate. SGR will determine and define any special needs or concerns of the chosen candidate, including anything that could be a complicating factor. SGR is experienced and prepared to help craft win-win solutions to negotiation “log-jams.”

Press Release (if requested)

Until you have “sealed the deal,” you need to be cautious in order to avoid the embarrassment of a premature announcement that does not work out. You also want to try to notify all senior staff and unsuccessful candidates before they read about it in the newspaper. SGR will assist with this coordination and with drafting any announcements or press releases.

Satisfaction Surveys

SGR is committed to authentically following the golden rule by providing prompt, professional and excellent communication and always treating every client with honor, dignity and respect. We ask clients and candidates to complete a brief and confidential survey after the completion of their recruitment. This helps us strive to continuously improve our processes and meet the changing needs of the workforce.

Supplemental Service: Post-Hire Team Building Workshop

SGR can provide a customized team building workshop after you hire for the position. SGR utilizes I-OPT, which is a validated measurement tool that shows how a person perceives and processes information. Because people “see” different things when they assess a situation, they are motivated to take various courses of action, so understanding you and your colleagues’ I- OPT Profiles will enable you to work much more effectively as a team. This service can be provided at an additional cost. View sample I-OPT reports at: bit.ly/sampleIOPTreports.

EXHIBIT "B"

RECRUITMENT COSTS & SERVICE GUARANTEE

Not-to-Exceed Price: \$24,900

Not-to-exceed price includes:

- **Professional Service Fee - \$18,500**
- **Expenses:**
 - **Position Profile Brochure & Marketing - \$1,500**
 - Production of a professional position profile brochure
 - Custom-designed graphics for social media and email marketing
 - Announcement in SGR's 10 in 10 Leadership and Innovation e-newsletter
 - Two (2) email blasts to SGR's opt-in Job Alert subscribers for the relevant job category
 - Featured job placement on SGR's website
 - Featured ad on SGR's job board
 - Promotions on SGR's social media pages – Facebook, Twitter, LinkedIn, and Instagram
 - **Semifinalist Recorded Online interviews** for up to twelve (12) semifinalists - **\$225 each**
 - **Comprehensive Media Reports** for up to five (5) finalists - **\$500 each**
 - **Comprehensive Background Investigation Reports** for up to five (5) finalists - **\$400 each**
 - **Comprehensive Reference Checks** with individual reports for up to five (5) finalists - **\$225 each**
 - **Up to Two (2) onsite visits** by the Recruiter to the Organization. Meals are billed back at a per diem rate of \$10 for breakfast, \$15 for lunch, and \$25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead. **Travel will be dependent on COVID restrictions in place at the time and take into consideration the health and safety of team members of both SGR and the Organization.**

Supplemental Services

The supplemental services listed below are not included in the not-to-exceed price:

- **Ad placements, as approved by the organization, will be billed back at actual cost with no markup for overhead.**
- There may be an additional charge for changes made to the Position Profile Brochure after the brochure has been approved by the organization and the position has been posted online.

- Additional online interviews (over and above the twelve (12) included in the not-to-exceed price above) are offered for \$225 per candidate.
- Additional comprehensive media reports (over and above the five (5) included in the not-to-exceed price above) are offered for \$500 per candidate.
- Additional background investigation reports (over and above the five (5) included in the not-to-exceed price above) are offered for \$400 per candidate.
- Additional reference checks (over and above the five (5) included in the not-to-exceed price above) are offered for \$225 per candidate.
- There is a cost of \$175 per candidate for the DiSC Management Profile.
- Semifinalist and finalist briefing materials will be provided to the search committee via an electronic link. Should the organization request printing of those materials, the reproduction and shipping of briefing materials will be outsourced and be billed back at actual cost.
- Additional in-person visits (over and above the two (2) in-person visits included in the not-to-exceed price above) by the Recruiter will be billed over and above the not-to-exceed price. Meals are billed back at a per diem rate of \$10 for breakfast, \$15 for lunch, and \$25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead.
- Candidates are reimbursed directly by the organization for travel expenses.
- SGR will conduct a Stakeholder Survey for \$1,000. SGR provides recommended survey questions and sets up an online survey. Stakeholders are directed to a web page or invited to take the survey by email. A written summary of results is provided to the organization.
- If desired, the Recruiter will travel to the communities of the finalist candidates to conduct onsite visits. Site visits will be charged at a day rate of \$1,000 per day, plus travel expenses. Meals are billed back at a per diem rate of \$10 for breakfast, \$15 for lunch, and \$25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead.
- A half-day onsite post-hire team building workshop is offered for \$4,000, plus travel expenses and \$150 per person for I-OPT reports.
- In the unexpected event the organization requests that unusual out of pocket expenses be incurred, said expenses will be reimbursed at the actual cost with no mark up for overhead.
- If the organization desires any supplemental services not mentioned in this section, an estimate of the cost and hours to be committed will be provided at that time, and no work shall be done without approval. Supplemental services will be billed out at \$250 per hour.

Billing

The professional service fee for the recruitment is billed in three equal installments during the course of the recruitment. The initial installment is billed after the position profile brochure has been created. The second installment is billed after semifinalists are selected. The final installment is billed at the conclusion of the recruitment. Expenses and supplemental services will be billed with each of the three installments, as appropriate.

Service Guarantee

SGR guarantees that you will be satisfied with the results of the full service recruitment process, or we will repeat the entire process one additional time and charge only for expenses. Additionally, if you select a candidate (that SGR has fully vetted) who resigns or is released within 18 months of their hire date, SGR will repeat the process one additional time and charge only for expenses. If the organization circumvents SGR's recruitment process and selects a candidate who did not participate in the full recruitment process, the service guarantee is null and void. We also guarantee that we will not directly solicit a candidate we bring to you for another job.

EXHIBIT "C"
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).

(8). The CONTRACTOR will comply with Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (LEP). This Executive Order seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency. In addition, the CONTRACTOR understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964.

(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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTORS or their subcontractors and subCONTRACTORS 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 TPO 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 CONTRACTORS 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.

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

(f). E-Verify.

(1). The TPO has agreements with FDOT which require the TPO to agree and assure FDOT that the U.S. Department of Homeland Security's E-Verify System (System) will be used to verify the employment eligibility of the CONTRACTOR's employees, and the employees of the CONTRACTOR's subcontractors, which are working on this Agreement. Accordingly, the CONTRACTOR agrees that it will utilize the System, in accordance with law and the regulations applicable to the System, to verify the employment eligibility of its employees and that it will require any subcontractor used in the performance of the Work to verify the employment eligibility of its employees. The CONTRACTOR shall provide evidence that it and its subcontractors have so verified the employment eligibility of all employees to the TPO and the Florida Department of Transportation ("FDOT") on forms and in the manner required by the TPO.

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

(g). Conflict of Interest.

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

(2). The CONTRACTOR shall promptly notify the TPO's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the CONTRACTOR's judgment or the quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest, or circumstance, the nature of work that the CONTRACTOR may undertake and advise the TPO as to whether the association, interest, or circumstance would constitute a conflict of interest if entered into by the CONTRACTOR. The TPO may notify the CONTRACTOR of its opinion as to whether a conflict exists under the circumstances identified by the CONTRACTOR. If, in the opinion of the TPO, the prospective business association, interest or circumstance would constitute a conflict of interest by the CONTRACTOR, then the CONTRACTOR shall immediately act to resolve or remedy the conflict. If the CONTRACTOR shall fail to do so, the TPO may terminate this Agreement for cause.

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

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

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

(6). The CONTRACTOR agrees for itself and shall insert in all contracts entered into in connection with the Work or Project or any property included or planned to be included in the Work or Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

No member, officer, or employee of the TPO during his tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(h). Independent Contractor Relationship. The CONTRACTOR is and shall be, in the performance of the Work, services and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the TPO. All persons engaged in any of the Work or services performed pursuant to this Agreement shall, at all times and in all places, be subject to CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects, the CONTRACTOR's relationship and the relationship of its employees to the TPO shall be that of an Independent Contractor and not as employees or agents of the TPO. The CONTRACTOR does not have the power or authority to bind the TPO in any promise, agreement, or representation.

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

(1). The CONTRACTOR agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the TPO, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any

federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

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

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

(4). The CONTRACTOR may not expend any funds received under this Agreement for lobbying the Florida Legislature or any agency of the State.

(5). This certification in this paragraph (i) is a material representation of fact upon which reliance is placed by the TPO when this transaction and Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. code and 49 CFR 20.110. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(j). Application of Federal Requirements.

(1). This Agreement is funded, in part, by funds made available by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA). The CONTRACTOR shall perform the duties and obligations described in this Exhibit C and shall complete the representations and provide any information required therein. The CONTRACTOR shall at all times comply with all applicable FHWA and FTA regulations, policies, procedures, and directives, as they may be promulgated or amended from time to time during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement. The CONTRACTOR agrees to include the above stated provision in each subcontract financed in whole or in part with federal assistance provided by the FHWA or FTA.

(2). This Agreement shall be deemed to include and does hereby incorporate by reference all standard terms and conditions required by the U.S. DOT and FTA, regardless of whether expressly set forth in this Agreement and include, but are not limited to, all of the duties, obligations, terms and conditions applicable to the Work as described in FTA Circular 4220.1F, and applicable federal law. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a

conflict with any other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requirement which would cause the TPO to be in violation of its Joint Planning Administration or any FTA terms and conditions applicable to this Project. By executing this Agreement, the CONTRACTOR agrees to include the above stated provision in each subcontract financed in whole or in part with FTA assisted funding.

(k). Truth in Negotiations Certificate. Signature of this Agreement by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the CONTRACTOR's most favored customer for the same or substantially similar service. The said rates and costs shall be adjusted to exclude any significant sums should the TPO determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside CONTRACTORS. TPO shall exercise its rights under this section within three (3) years following final payment.

(l). Disadvantaged Business Enterprises (DBE) and Prompt Payment.

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

(2). Neither the CONTRACTOR nor any subcontractor it may use in the performance of this Agreement shall discriminate on the basis of race, color, national origin, or sex in the award of or the performance of this Agreement. The CONTRACTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of this Agreement and the Work associated with this U.S. DOT assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy or action as the TPO deems appropriate which may include but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages, and/or
4. Disqualifying CONTRACTOR from future contracts as non-responsible.

(3). The CONTRACTOR shall include the statements set forth in sub-paragraphs (1). and (2). above in each subcontract or sub-CONTRACTOR contract it lets which contract directly relates to this Agreement.

(4). The CONTRACTOR is encouraged to seek DBEs for participation in subcontracting opportunities.

(5). The CONTRACTOR shall abide by the provisions of the TPO's adopted DBE Program, as it may be amended from time to time, and acknowledges that its failure to comply with said Program is a material breach which may result in the termination of this Agreement or such other sanctions or action deemed appropriate by the TPO under the circumstances, including but not limited to the sanctions identified in paragraph B. above.

(6). The CONTRACTOR understands that each DBE firm utilized in the performance of this Agreement must be certified by FDOT or other participant(s) in Florida's United Certification Program in order to be counted toward the DBE participation goal.

(7). The TPO reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement.

(8). The CONTRACTOR will only be permitted to replace a certified DBE subcontractor who is unwilling or unable to perform. If a subcontractor fails to perform or make progress as required by this Agreement and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by TPO. If a goal or preference points has been assigned to this Agreement, the CONTRACTOR shall make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on this Agreement with another certified DBE, to the extent needed to meet the contract goal. The CONTRACTOR shall notify the TPO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation of such. The CONTRACTOR must obtain the TPO's representative's prior approval to substitute a DBE. The CONTRACTOR shall provide copies of new or amended subcontracts, or documentation of good faith efforts, as required by the TPO. If the CONTRACTOR fails or refuses to comply in the time specified, the TPO may issue an order stopping all or part of the work and payments therefor until satisfactory action has been undertaken, terminate this Agreement for noncompliance/default, impose sanctions, or take other action deemed appropriate by the TPO under the circumstances.

(9). The CONTRACTOR shall provide the TPO with a copy of the CONTRACTOR's contract with any subcontractor and any other related documentation requested by TPO's representative along with documentation evidencing the certification of DBEs to be used as subcontractors in the performance of this Agreement.

(10). The CONTRACTOR agrees to maintain in Volusia County, Florida or such other location in Florida approved by the TPO's representative, all relevant records, documents of payments and information necessary to document payments to DBEs for at least five (5) years following the termination of this Agreement. In the event litigation is commenced involving or relating to a DBE, the CONTRACTOR agrees to maintain such records until the conclusion of all litigation and the expiration of any appeal periods. All such records and information shall be immediately made available for reproduction, examination or inspection upon the request of TPO's representative or any authorized representative of FDOT or the U.S. DOT or any agency thereof. The CONTRACTOR agrees to require all of its DBE subcontractors to comply with the same records and information maintenance and availability requirements that it is subject to in this Agreement.

(11). The CONTRACTOR shall, on a monthly basis or such other period required by the TPO's representative, submit payment certification(s) for all payments it is seeking and certifications from all subcontractors indicating who has been paid and how much. Such certifications shall be made in the manner required and/or on a form(s) furnished by the TPO's representative. Said form(s) shall be signed by the CONTRACTOR, affirmed as true and accurate, and shall be subject to all statutory and legal requirements applicable to the submission of false statements. The CONTRACTOR will fully participate and cooperate with TPO, FDOT, U.S. DOT or its agencies, and their authorized representatives, regarding any monitoring process it establishes pertaining to the use and review of all subcontractors, including all interim and final audits of payments to subcontractors. Audits may be conducted to review payments to DBE subcontractors to ensure that the actual amount paid to DBEs equals or exceeds the dollar amounts of the Work the CONTRACTOR represented would be subcontracted to or performed by DBEs, or for which DBEs would be utilized.

(12). Prior to receiving any progress payment due under this Agreement, the CONTRACTOR shall certify that it has disbursed to all subcontractors and suppliers, having an interest in the Agreement or performing work or providing materials or supplies used by the CONTRACTOR in its performance of the Work, their pro-rata share(s) of the payment received by the CONTRACTOR from previous progress payments for all work completed and materials furnished in the previous period, less any retainage withheld by the CONTRACTOR pursuant to an agreement with a subcontractor for payment, as approved by the TPO and FDOT, and as deemed appropriate by TPO. The CONTRACTOR shall return all retainage payments withheld by the CONTRACTOR within thirty (30) days after each subcontractor's work has been satisfactorily completed. The CONTRACTOR shall not be entitled to any progress payment before certification, unless the

CONTRACTOR demonstrates good cause for not making any such required payment and furnishes written notification of such good cause, acceptable to the TPO, to both the TPO and the affected subcontractors and suppliers.

(13). Within thirty (30) days of the CONTRACTOR's receipt of any payment(s) received under this Agreement and any final progress payment received thereafter, the CONTRACTOR shall pay all subcontractors and suppliers having an interest in the Agreement or performing work or providing materials or supplies used by the CONTRACTOR in its performance of the Work, their pro-rata share(s) of the payment(s), unless the CONTRACTOR demonstrates good cause, acceptable to the TPO, for not making any required payment(s) and furnishes written notification to the TPO and the affected subcontractors and suppliers within said thirty (30) day period.

(14). The provisions of this section shall be construed in conformity with any requirement of state or federal law. In the event of any conflict, state or federal law will control the resolution of the conflict.