

May 12, 2016

Mr. Jared Schneider  
Kimley-Horn and Associates, Inc.  
655 Franklin Street  
Suite 150  
Tampa, FL 33602

Dear Mr. Schneider:

**RE: General Planning Consultant Contract**

Enclosed, please find a fully-executed copy of the contract between Kimley-Horn and Associates, Inc. and the Pinellas Planning Council and MPO for general planning consultant work. We look forward to working with you.

If you have any questions regarding the contract, please contact Ms. Alicia Parinello in our office at (727) 464-5693 or e-mail her at [aparinello@pinellascounty.org](mailto:aparinello@pinellascounty.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Whit Blanton', written over a horizontal line.

Whit Blanton, FAICP, Executive Director  
Pinellas Planning Council  
Pinellas County Metropolitan Planning Organization

WB/AP:ck  
Enclosure

## AGREEMENT FOR GENERAL PLANNING SERVICES

This agreement, ("AGREEMENT"), is made and entered into this 4th day of May, 2016, by and between the Pinellas Planning Council, ("PPC"), and the Pinellas County Metropolitan Planning Organization ("MPO"), collectively referred to as the "Board" or "PPC/MPO" as necessary, and Kimley-Horn and Associates, Inc., hereafter called the **CONSULTANT**.

### WITNESSETH:

WHEREAS, the PPC/MPO did determine that the **CONSULTANT** is fully qualified to render the services contracted and as outlined herein; and

WHEREAS, the PPC/MPO does hereby retain the **CONSULTANT** to furnish said services in connection with general planning services of the PPC/MPO as identified in the Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the **CONSULTANT** has expressed willingness and ability to provide aforementioned services.

NOW, THEREFORE, the PPC/MPO and the **CONSULTANT** in consideration of the mutual covenants hereinafter set forth agree as follows:

### SECTION 1. SERVICES.

1.0 The services described and provided for under Exhibit A (Scope of Services) constitutes the Scope of Services to be performed by the **CONSULTANT** under this **AGREEMENT**.

#### 1.1 WORK EFFORT REQUIREMENT

Services to be rendered by the **CONSULTANT** shall be commenced subsequent to proper and full execution of the **AGREEMENT** and an approved task work order.

Individual project assignments, herein referred as the **TASK WORK ORDER**, shall be authorized and assigned by the PPC/MPO's Executive Director under the direction of an assigned project manager. The **CONSULTANT** agrees to perform professional services associated with the requested work in accordance with the terms of the Exhibit A. The Executive Director or assigned project manager shall furnish the **CONSULTANT** a Notice to Proceed specifying the work to be done and the type and amount of compensation for each task, or group of tasks, authorized under this **AGREEMENT**. The **CONSULTANT** shall commence no work until receipt of a Notice to Proceed.

In connection with professional services to be rendered pursuant to this **AGREEMENT**, the **CONSULTANT** further agrees:

- 1.1.1 To maintain an adequate staff of qualified personnel on the **TASK WORK ORDER** at all times to ensure its completion within the term specified.
- 1.1.2 To provide progress reports to the PPC/MPO's Executive Director or assigned project manager upon request and at intervals established by the PPC/MPO. The PPC/MPO will be entitled at all times to be advised, at its request, as to the status of work being done by the **CONSULTANT** and of the details thereof.
- 1.1.3 To hold all pertinent data and other work-related products open to the inspection of the PPC/MPO's Executive Director or assigned project manager.
- 1.1.4 That all services must meet the specifications as required by state and federal regulations.

## 1.2 **KEY PERSONNEL**

- 1.2.1 The **CONSULTANT** shall maintain an adequate and competent professional staff so as to enable the **CONSULTANT** to timely perform under this **AGREEMENT**. The **CONSULTANT** agrees that whenever, for any reason, one or more of the key personnel assigned to a **TASK WORK ORDER** are unavailable for performance under this **AGREEMENT**, the PPC/MPO may require the **CONSULTANT** to replace such individual(s) with an individual(s) of substantially equal abilities and qualifications.

In accordance with the above, the **CONSULTANT** shall submit to the PPC/MPO a resume giving the full name, title, qualifications, and experience for all successors and/or new persons prior to assignment of such personnel to perform work under this **AGREEMENT**. Prior written consent of the MPO/PPC is required before the **CONSULTANT** may utilize said new personnel to perform work associated with the **AGREEMENT**.

- 1.2.2 The **CONSULTANT** agrees to acquire and maintain sufficient legal, financial, technical, and managerial capacity to plan, manage and complete the **TASK WORK ORDER**.
- 1.2.3 The **CONSULTANT'S** personnel must be qualified and available in giving expert testimony and depositions and capable of making court appearances if requested by the PPC/MPO.
- 1.2.4 The **CONSULTANT** may associate with it such specialists for the purpose of its services hereunder (hereinafter **SUBCONSULTANTS**), without additional cost to the PPC/MPO other than those costs negotiated within the limits and terms of this **AGREEMENT**. Should the **CONSULTANT** desire to utilize **SUBCONSULTANTS**, the **CONSULTANT** is fully responsible for the satisfactory completion of all subcontracted work.

The **CONSULTANT** must require in all subcontracts that the **SUBCONSULTANT** is bound by all the terms of this **AGREEMENT**, including, but not limited to, the PPC/MPO's right to secure materials or services from the **SUBCONSULTANT** which might be a part of the **SUBCONSULTANT's** work production.

The **CONSULTANT**, however, shall not assign or transfer any work under this **AGREEMENT** to other than the **SUBCONSULTANTS** listed in Exhibit C (Hourly Rates) without the written consent of the PPC/MPO. It is understood and agreed that the PPC/MPO will not, except for such services so designated in Exhibit A, or as may be approved by the PPC/MPO, if applicable, permit or authorize the **CONSULTANT** to perform the contract work with other than its own organization and named **SUBCONSULTANTS**.

**1.2.5** The **CONSULTANT** must state in all subcontracts that services performed by any such SUBCONSULTANT shall be subject to the Professional Consultant Work Performance Evaluation System as defined in Chapter 14-75, Florida Administrative Code.

**1.2.6** *Standards of Conduct* - The **CONSULTANT** is bound by the normal and customary professional standards of care and the standards of conduct provided in applicable Florida Statutes and applicable rules of the Board of Professional Regulation as they relate to work performed under this **AGREEMENT**. These Statutes will by reference be made a part of this **AGREEMENT** as though set forth in full. The **CONSULTANT** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this **AGREEMENT**.

### **1.3**     **GENERAL CONDITIONS**

**1.3.1** The **CONSULTANT** agrees to begin the **TASK WORK ORDER** work in a timely manner after receiving the Notice to Proceed from the PPC/MPO's Executive Director or assigned project manager. The **CONSULTANT** agrees to complete the overall **TASK WORK ORDER** - after having received the Notice to Proceed from the PPC/MPO's Executive Director or assigned project manager.

**1.3.2** The **CONSULTANT** shall coordinate work activities with the PPC/MPO and, as necessary, the Florida Department of Transportation (FDOT), the Commission for the Transportation Disadvantaged (CTD) the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), Pinellas County Board of County Commissioners in its capacity as the Countywide Planning Authority and other involved agencies and vendors, as specified in the scope of services defined in the **TASK WORK ORDER**.

**1.3.3** In the event that data are lost due to fault of the **CONSULTANT** or its SUBCONSULTANTS, the PPC/MPO will not be billed. In addition, as recompense for said lost data, the **CONSULTANT** will perform additional data collection at no cost commensurate (i.e., on a one-to-one basis) with the amount of lost information.

**1.3.4** Chain of custody for all data must be adequately maintained and documented.

**1.3.5** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

### **SECTION 2. SUBMITTAL FOR PAYMENT REQUIREMENTS.**

**2.0** The **CONSULTANT** shall submit electronic invoices on a monthly basis. All invoices must include a progress report showing the actual tasks performed and their relationship to the fee claimed. Invoices based on an approved Lump Sum Fee shall include a table showing the percentage complete by task and the total budget amount. Invoices based on an Upset Limit Fee shall include a table with the hourly rates, time worked and direct expenses itemized and included as backup. Each invoice must include a transmittal letter signed by the **CONSULTANT'S** project manager stating that the submittal package is complete, and all pertinent calculations and details have been checked for accuracy and completion. Incomplete invoice submittals and invoices not properly prepared (mathematical errors, billing not reflecting actual work done, no

signature, etc.) shall be returned to the **CONSULTANT** for correction. All progress reports and invoices shall be e-mailed to the attention of the PPC/MPO's Executive Director, [wblanton@pinellascounty.org](mailto:wblanton@pinellascounty.org) or his PPC/MPO staff designee.

- 2.1.1 Invoice submittals shall include a Disadvantaged Business Enterprise (DBE) utilization schedule. DBE usage and payments must be included on the invoice as a separate line item and be supported with the DBE's original invoice. Proof of payment from the **CONSULTANT** to the DBE is required.
- 2.1.2 The PPC/MPO may request additional information and evidence to support any and all invoices for fees claimed to be earned by the **CONSULTANT** before the PPC/MPO processes the invoices for payment.
- 2.1.4 The PPC/MPO in no way obligates itself to check the **CONSULTANT'S** work and further is not responsible for maintaining **TASK WORK ORDER** schedules.
- 2.1.5 Pursuant to Florida Statute §337.162, all licensed and duly registered professionals under the employ or in contract of the **CONSULTANT** and associated with this **AGREEMENT** shall be held accountable for the quality of services provided. All final plans, documents, reports, studies, and other data prepared by the **CONSULTANT** or associated parties will bear the proper professional endorsements as required by law.
- 2.1.6 The actual acceptance by the PPC/MPO of any submittal, including the final acceptance of the **TASK WORK ORDER** documents and reports provided for in this **AGREEMENT**, shall neither constitute nor imply any review or approval by the PPC/MPO of the services performed by the **CONSULTANT** under the provisions of this **AGREEMENT** but shall indicate only the PPC/MPO's acceptance of the **CONSULTANT'S** affirmation of compliance with the provisions and intent of this **AGREEMENT**.

## 2.2 **TASK WORK ORDER MANAGEMENT SCHEDULE**

- 2.2.1 A **TASK WORK ORDER** management schedule for each assigned task shall be prepared by the **CONSULTANT** and approved by the PPC/MPO's Executive Director or assigned project manager. The schedule shall include a time line, proposed scope of services, a budget sheet with the staff job classifications, number of staff hours with the associated approved rates and any additional expenses (such as printing costs) associated with the **TASK WORK ORDER**.
- 2.2.2 The schedule shall be in accordance with each assigned task for work associated with Exhibit A.
- 2.2.3 Any document and/or deliverable relating to the **TASK WORK ORDER** including, but not limited to, reports, maps, database collections, etc., must be provided to the PPC/MPO in the original electronic format in which they were produced (i.e. MS Word, Excel, etc.) and in a .pdf file unless otherwise specified by the PPC/MPO. All documents must be in a format which is readily accessible by devices to aid the visually disabled and must also be in a web accessible format. All data used within a document or report must have the data source identified with a footnote at the bottom of the page or notation at the bottom of a table or graph at the point of reference. Final **TASK WORK ORDER** payment due to the **CONSULTANT** may be withheld until the original electronic form of all documents and deliverables is received by the assigned project manager.



It shall be the responsibility of the **CONSULTANT** to ensure at all times that sufficient time remains in the **TASK WORK ORDER** schedule within which to complete services on the **TASK WORK ORDER**. In the event there have been delays which would affect the **TASK WORK ORDER** completion date, the **CONSULTANT** shall submit a written request a minimum of six weeks before the expiration of the **AGREEMENT** to the PPC/MPO which identifies the reason(s) for the delay, the amount of time related to each reason, specific indication as to whether or not the delays were concurrent with one another, and a plan/schedule to mitigate the delay. The PPC/MPO will review the request and make a determination as to granting all or part of the requested extension or revised plan/schedule. PPC/MPO may grant to the **CONSULTANT**, by "Letter of Time Extension," an extension of time for performance, equal to the aforementioned delays but not to extend beyond one (1) year from the date of expiration of this **AGREEMENT**.

In the event time for performance expires and the **CONSULTANT** has not requested, or if the PPC/MPO has denied, an extension of the **TASK WORK ORDER** schedule completion date, partial progress payments will be stopped on the date time expires. No payment shall be made for work performed subsequent to the completion date unless a time extension is granted or all work has been completed and accepted by the PPC/MPO.

### **SECTION 3. SERVICES TO BE FURNISHED BY THE PPC/MPO.**

- 3.0 Non-Appropriation** - In the event that conditions arise, such as lack of available funds, which in the PPC/MPO's opinion make it advisable and in the public interest to immediately terminate this **AGREEMENT**, it may do so upon written notice. The PPC/MPO, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void and no money may be paid on such agreement. Accordingly, the PPC and MPO's performance and obligation to pay under this **AGREEMENT** is contingent upon appropriation by the FDOT, CTD, FHWA or FTA.
- 3.1** The PPC/MPO shall provide the **CONSULTANT** copies of all existing previously prepared files/documents pertinent to the **TASK WORK ORDER**, which the PPC/MPO may have in its possession, when available. However, the onus is on the **CONSULTANT** to research, design, implement, hire or acquire any component or any part of the project thereof deemed to be requisite for the satisfactory completion of the said task or any phase of the **TASK WORK ORDER**.

Under no circumstances will the PPC/MPO be held liable or negligent for the perceived inability of any of its employees to locate, retrieve, furnish, supply or provide any of the requested files as needed by the **CONSULTANT**.

- 3.2** PPC/MPO personnel shall coordinate all releases of information to the public or any other outside agencies. The **CONSULTANT** or its SUBCONSULTANTS agrees that it shall make no statements, press releases, or publicity releases concerning this **AGREEMENT** or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this **AGREEMENT**, or any particulars thereof, during the period of the **AGREEMENT** without first notifying the PPC/MPO and securing its prior written consent unless such disclosure is required by law, subpoena, other court or administrative order.

#### **SECTION 4. SCHEDULE OF PAYMENTS.**

- 4.0 Upon Board or Executive Director approval of submitted invoices, as applicable, the PPC/MPO shall make payments as invoiced to the **CONSULTANT** in accordance with the following terms. These terms are applicable to all fees incurred, including Upset Limit and Lump Sum Fees.
- 4.1 The PPC/MPO agrees to pay the **CONSULTANT** compensation as detailed in Section 5.0. Invoices for fees or other compensation for services and expenses shall be submitted to the PPC/MPO in detail sufficient for a proper pre-audit and post-audit.
- 4.2 The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this **AGREEMENT**, shall be as set forth in the Code of Federal Regulations; Titles 23, 48, and 49; and other pertinent federal and state regulations as applicable. In the event there is a conflict between state regulations and federal regulations, the more restrictive of the applicable regulations will govern.

#### **SECTION 5. COMPENSATION TO THE CONSULTANT.**

- 5.0 The PPC/MPO agrees to pay the **CONSULTANT** for the performance of authorized services described in Exhibit A through individual **TASK WORK ORDERS**.
- 5.1 The PPC/MPO and the **CONSULTANT** shall negotiate an Upset Limit or Lump Sum Fee for each **TASK WORK ORDER**. The fees shall be determined in accordance with the following provisions:
- 5.2 The upset limit or lump sum amount established for each assignment shall be the agreed personnel effort required for performance of the services at the approved hourly rates as specified in Exhibit C, plus the cost of negotiated expenses.
- 5.3 The approved hourly rates per job classification for the prime **CONSULTANT** and any **SUBCONSULTANT** to be applied to this **AGREEMENT** are specified in Exhibit C. Approved hourly rates in Exhibit C may be re-negotiated during renewal of the contract.

#### **SECTION 6. COMPENSATION ELEMENTS.**

- 6.0 The negotiated fee for each **TASK WORK ORDER** will compensate the **CONSULTANT** for all allowable costs related to the authorized services; salaries, overhead, fringe benefits, expenses, operating margin and FCCM, which is included in the loaded rate specified in Exhibit C.
- 6.1 **METHOD OF PAYMENT**

Upon Board approval, the **CONSULTANT** shall be compensated for services approved by the PPC/MPO in connection with the performance of authorized services for each **TASK WORK ORDER** as follows. Invoicing standards as described in Sections 2.0 and 4.0 are applicable to the Upset Limit Fee and Lump Sum Fee:

**A. Upset Limit Fee**

Payments shall be made for the approved hourly rates with the direct expenses itemized for reimbursement, not to exceed the upset limit amount approved by the PPC/MPO Executive Director or assigned project manager.

**B. Lump Sum Fee**

Payments for lump sum fee task authorizations shall be made in an amount equal to the percentage by task of lump sum work that has been satisfactorily performed as approved by the PPC/MPO Executive Director or assigned project manager.

**SECTION 7. SATISFACTORY PERFORMANCE.**

- 7.0 All services to be provided by the **CONSULTANT** under the provisions of this **AGREEMENT**, including services to be provided by **SUBCONSULTANTS**, shall be performed to the reasonable satisfaction of the PPC/MPO's Executive Director.
- 7.1 The **CONSULTANT** shall pay the PPC/MPO all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings that the PPC/MPO sustains by reason of any default, any negligent act, error or omission, including patent infringements on the part of said **CONSULTANT** in connection with the performance of this **AGREEMENT**. By signing this **AGREEMENT**, the **CONSULTANT** waives any right to reciprocal attorney's fees due to budgetary limitations imposed on local government entities under Chapter 129, Florida Statutes.

**SECTION 8. CONSULTANT'S ACCOUNTING RECORDS.**

- 8.0 The **CONSULTANT** agrees to establish and maintain for the **TASK WORK ORDER** a set of accounts within the framework of an established accounting system and procedures that can be identified with the **TASK WORK ORDER**, in accordance with applicable Federal Regulations and other requirements that the FDOT, CTD, FHWA and FTA may impose. The **CONSULTANT** agrees that all checks, payrolls, invoices, contracts, vouchers, expenses, orders, or other accounting documents related in whole or in part to the **TASK WORK ORDER** shall be clearly identified, readily accessible, and available to the PPC/MPO upon its request and, to the extent feasible, kept separate from documents not related to the **TASK WORK ORDER**.
- 8.1 All costs charged to the **TASK WORK ORDER**, including any approved services contributed by the **CONSULTANT** or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges.
- 8.2 The **CONSULTANT** agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the **TASK WORK ORDER** until the **CONSULTANT** has received and filed in its records a properly signed voucher describing in proper detail the purpose for the expenditure.
- 8.3 The **CONSULTANT** shall require all **SUBCONSULTANTS**, insurance agents, and material suppliers (payees) to comply with the provisions of this **AGREEMENT** by insertion of requirements of this **AGREEMENT** in written agreements between the **CONSULTANT** and



such payees. Failure to include such provisions shall be reason to exclude some or all of the related payee's costs from the amount payable to the **CONSULTANT** pursuant to this **AGREEMENT**.

#### **SECTION 9. REPORTING, RECORD RETENTION, AND ACCESS.**

- 9.0** The **CONSULTANT'S** records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the PPC/MPO's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the **CONSULTANT** or any of his payees pursuant to the execution of the **AGREEMENT**. These records shall include, but not be limited to, accounting records, written policies and procedures, **SUBCONSULTANT** files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this **AGREEMENT**. They shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this **AGREEMENT**.
- 9.1** For the purpose of such audits, inspections, examinations and evaluations, the PPC/MPO's agent or authorized representative shall have access to said records from the effective date of the **AGREEMENT**, for the duration of work, and until five (5) years after the date of final payment by the PPC/MPO to the **CONSULTANT** pursuant to this **AGREEMENT**.
- 9.2** The PPC/MPO's agent or authorized representative shall have access to the **CONSULTANT'S** facilities and all necessary records in order to conduct audits in compliance with this Section. The PPC/MPO's agent or authorized representative shall give the **CONSULTANT** reasonable advance notice of intended inspections, examinations, and/or audits.
- 9.3** The **CONSULTANT** agrees that all reports and other documents or information intended for public availability developed under this **TASK WORK ORDER** and required to be submitted to the PPC/MPO must be prepared and submitted in the original electronic format and in accordance with requirements that the PPC/MPO may specify, understanding that the PPC/MPO reserves the right to request records in other formats.
- 9.4** The **CONSULTANT** agrees to maintain intact and readily accessible all data, documents, reports, accounting records, contracts, and supporting materials relating to the **TASK WORK ORDER** that the federal government, the state government or the PPC/MPO may require during the course of the **TASK WORK ORDER** and for five years thereafter. Upon request, the **CONSULTANT** and **SUBCONSULTANTS** agree to permit the Secretary of Transportation; the Comptroller General of the United States; and, if appropriate, the State of Florida or their authorized representatives to inspect all **TASK WORK ORDER** work, materials, payrolls, and other data, and to audit the books, records, and accounts of the **CONSULTANT** and its **SUBCONSULTANTS** pertaining to the **TASK WORK ORDER** as required by 49 U.S.C. § 5325(g).
- 9.5** The **CONSULTANT** agrees to prepare and make available a comprehensive report or reports on the results of the **TASK WORK ORDER**, the conclusions reached, and the methods used, as requested.

#### **SECTION 10. TASK WORK ORDER COMPLETION AND AUDIT.**

- 10.0** Within sixty (60) calendar days of the **TASK WORK ORDER**'s completion date or termination, the **CONSULTANT** agrees to submit a final Financial Status Report, a certification of **TASK WORK ORDER** expenses, and third party audit reports, as applicable.

#### **SECTION 11. OWNERSHIP OF TASK WORK ORDER DOCUMENTS.**

- 11.1** All records, electronic files, documents, tracings, plans, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by the **CONSULTANT** under this **AGREEMENT** are the property of, the PPC/MPO without restriction or limitation on their use and shall be made available upon request to the PPC/MPO at any time. All such documents shall be delivered to the PPC/MPO upon completion or termination of this **AGREEMENT**. The **CONSULTANT** at its own expense may retain copies for its files and internal use.
- 11.2** The **CONSULTANT** shall not publish or copyright any materials and products or patent any invention developed under this **AGREEMENT** in whole or in part, or in any manner or form. The PPC/MPO will have the right to visit the site for inspection of the work and the drawings of the **CONSULTANT** at any time. Unless changed by written agreement of the parties, said site shall be Kimley-Horn and Associates, Inc. 655 Franklin Street, Suite 150, Tampa, FL 33602.
- 11.3** Any and all reports, documents provided or created in connection with this **AGREEMENT** are and shall remain the property of the Pinellas County PPC/MPO. In the event of termination of this **AGREEMENT**, any reports, photographs, surveys, and other data and documents prepared by **CONSULTANT**, whether finished or unfinished, shall become the property of the PPC/MPO and shall be delivered to the PPC/MPO's Executive Director within seven (7) days of termination of the **AGREEMENT** by either party.

#### **SECTION 12. INSURANCE COVERAGE AND INDEMNIFICATION.**

- 12.0** The **CONSULTANT** shall obtain and maintain at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better. Within ten (10) calendar days of executed Agreement, the **CONSULTANT** shall provide the PPC/MPO with properly executed and approved Certificates of Insurance to evidence compliance with the insurance requirements of the agreement. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). A copy of the endorsement(s) referenced in 12.6 for Additional Insured shall be attached to the certificate(s).
- 12.1** No Services shall commence under this agreement unless and until the required Certificate(s) of Insurance are received and approved by the PPC/MPO. Approval by the PPC/MPO of any Certificate of Insurance does not constitute verification by the PPC/MPO that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Agreement. The PPC/MPO reserves the right to require a certified copy of the entire insurance policy, including endorsements, at any time during the Agreement period.

- 12.2 All policies providing liability coverage(s), other than Professional Liability and Worker's Compensation policies, obtained by the **CONSULTANT** to meet the requirements of the Agreement shall be endorsed to include PPC/MPO as an Additional Insured.
- 12.3 If any insurance provided pursuant to the Agreement expires prior to the expiration of the Agreement, renewal Certificates of Insurance and endorsements shall be furnished by the **CONSULTANT** to the PPC/MPO at least thirty (30) days prior to the expiration date.
- 12.4 **CONSULTANT** shall also notify PPC/MPO within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said **CONSULTANT** from its insurer. Notice shall be given by certified mail to: PPC/MPO, 310 Court Street, Clearwater, Florida 33756; and nothing contained herein shall absolve **CONSULTANT** of this requirement to provide notice.
- 12.5 Should the **CONSULTANT**, at any time, not maintain the insurance coverages required herein, the PPC/MPO may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the PPC/MPO and charge the **CONSULTANT** for such purchase. The PPC/MPO shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the PPC/MPO to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- 12.6 The PPC/MPO reserves the right, but not the duty, to review and request a copy of the **CONSULTANT**'s most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.
- 12.7 Each insurance policy shall include the following terms and/or conditions in the policy:
- (1) The Named Insured on the Certificate of Insurance must match the entity's name that is signing the Agreement.
  - (2) Companies issuing the insurance policy, or policies, shall have no recourse against PPC/MPO for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of the **CONSULTANT**.
  - (3) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by PPC/MPO or any such future coverage, or to PPC/MPO's Self-Insured Retentions of whatever nature.
  - (4) All policies shall be written on a primary, non-contributory basis.
  - (5) Any certificate of insurance evidencing coverage provided by a leasing company for either Workers Compensation or Commercial General Liability shall have a list of covered employees certified by the leasing company attached to the Certificate of Insurance. The PPC/MPO shall have the right, but not the obligation to determine that the **CONSULTANT** is only using employees named on such list to perform work for the PPC/MPO. Should employees not named be utilized by Contractor, the PPC/MPO, at its option may stop work without penalty to the PPC/MPO until proof of coverage or removal of the employee by the **CONSULTANT** occurs, or alternatively find the **CONSULTANT** to be in default and take such other protective measures as necessary.

- (6) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of PPC/MPO from the **CONSULTANT**.

12.8 The insurance requirements for this Agreement, which shall remain in effect throughout its duration, are as follows:

(A) Workers' Compensation Insurance

Limit	Florida Statutory
Employers Liability Limits	
Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

- (B) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operation and Personal Injury.

Limits

General Aggregate	\$ 2,000,000
Products/Completed Operations Aggregate	\$ 1,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000

- (C) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired and non-owned vehicles. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless **CONSULTANT** can show that this coverage exists under the Commercial General Liability policy.

Limit

Per Accident	\$ 1,000,000
--------------	--------------

- (D) Professional Liability Insurance (Errors and Omissions) with at least minimum limits as follows. If "claims made" coverage is provided, "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", **CONSULTANT** may submit annually to the PPC/MPO, for a three (3) year period, a current certificate of insurance providing "claims made" insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

Limits





General Aggregate	\$1,000,000
Each Occurrence or Claim	\$1,000,000

For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

(E) Property Insurance **CONSULTANT** will be responsible for all damage to its own property, equipment and/or materials.

- 12.9** The **CONSULTANT** does hereby agree to indemnify, defend, save and hold harmless the PPC/MPO and all the members of its Board, its officers, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, expenses, attorney's fees, and judgments of every nature and description, including claims for property damage and claims for injury or death of persons, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, bylaws, ordinance, order or decree brought or recovered against it by reason of any act of negligence or omission of the **CONSULTANT**, its agents, or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the PPC/MPO. Nothing herein shall purport to waive the PPC/MPO's sovereign immunity as provided in §768.28, Florida Statutes.

### **SECTION 13. FEDERAL CLAUSE REQUIREMENTS.**

The following federally required clauses, incorporated herein by this reference, apply to this **AGREEMENT**:

1. Fly America Requirements
2. Civil Rights Requirements
3. Disadvantaged Business Enterprise (DBE)
4. Energy Conservation Requirements
5. Clean Water Requirements
6. Clean Air
7. Recycled Products
8. Lobbying
9. No Government Obligation to Third Parties
10. Program Fraud and False or Fraudulent Statements and Related Acts
11. Government-Wide Debarment and Suspension
12. Incorporation of Federal Transit Administration (FTA) Terms
13. Access to Records
14. Federal Changes
15. Termination
16. Breaches and Dispute Resolution
17. Patent and Rights in Data

- 1. Fly America Requirements** - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR



Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **2. Civil Rights Requirements**

**a. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332:

*“The **CONSULTANT** shall not discriminate on the basis of race, age, creed, disability, marital status, color, national origin, or sex in the performance of this contract. The **CONSULTANT** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the **CONSULTANT** to carry out these requirements is a material breach of this **AGREEMENT**, which may result in the termination of this **AGREEMENT** or such other remedy, as the PPC/MPO deems appropriate.”*

Each subcontract the **CONSULTANT** signs in regards to this **TASK WORK ORDER** must include the assurance in this paragraph (see 49 CFR 26.13(b)). The **CONSULTANT** agrees to comply with applicable federal and state implementing regulations and other implementing requirements the Federal Transit Administration (FTA), FDOT or CTD may issue. In addition to the above assurance, the Operator shall not discriminate on the basis of sexual orientation, in accordance to Pinellas County Code Chapter 70 as amended. In connection with this Agreement, the undersigned will complete and submit Exhibit E “Title VI/Nondiscrimination Policy Statement”, in accordance with its instructions.

**b. Equal Employment Opportunity** - The following equal employment opportunity requirements apply to this **AGREEMENT**:

**(1). Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the **CONSULTANT** agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the **TASK WORK ORDER**. The **CONSULTANT** agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment

advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the **CONSULTANT** agrees to comply with any implementing requirements FTA may issue.

**(2). Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 through 634 and Federal transit law at 49 U.S.C. § 5332, the **CONSULTANT** agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the **CONSULTANT** agrees to comply with any implementing requirements FTA may issue.

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

**(4). Access to Services for Persons with Limited English Proficiency** – To the extent applicable and except to the extent that FTA determines otherwise in writing, the **CONSULTANT** agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001. The MPO's LEP Plan is available at the PPC/MPO office or may be viewed on-line at: <http://www.pinellascounty.org/mpo/PDFs/DBETitleIV/lep.pdf>.

**(5). Environmental Justice** – The **CONSULTANT** agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

**(6). Other Nondiscrimination Laws** – The **CONSULTANT** agrees to comply with all applicable provisions of other federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. The **CONSULTANT** also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

- 3. Disadvantaged Business Enterprise** – This **AGREEMENT** is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The MPO's overall goal for FY 2014-2016 DBE participation is 4.4% and is applicable to this **AGREEMENT**. This requirement reflects the availability of willing and able DBEs who are registered with the State of Florida that would be expected to participate in MPO and its **CONSULTANTs** contracts absent the effects of discrimination.

The **CONSULTANT** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted **AGREEMENT**. Failure by the **CONSULTANT** to carry out these requirements is a material breach of this **AGREEMENT**, which may result in the termination of this **AGREEMENT** or such other remedy as the PPC/MPO deems appropriate.

The **CONSULTANT** is required to pay its subcontractors/SUBCONSULTANTS performing work related to this **AGREEMENT** for satisfactory performance of that work no later than 30 days after the **CONSULTANT's** receipt of payment for that work from the PPC/MPO. In addition, the **CONSULTANT** may not hold retainage from its **CONSULTANT**.

The **CONSULTANT** must promptly notify the PPC/MPO, whenever a DBE performing work related to this **AGREEMENT** is terminated or fails to complete its work, and must make good faith efforts to engage another DBE to perform at least the same amount of work. The **CONSULTANT** may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the PPC/MPO.

Information on the MPO's DBE Program requirements is available at the PPC/MPO offices and on-line at: <http://www.pinellascounty.org/mpo>.

More information on the State of Florida DBE Program, including an application and available DBE bidders list may be found at:

[http://www.dot.state.fl.us/equalopportunityoffice/New\\_Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf](http://www.dot.state.fl.us/equalopportunityoffice/New_Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf).

**4. Energy Conservation** - The **CONSULTANT** agrees to the extent applicable, 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.

**5. Clean Water** – The **CONSULTANT** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The **CONSULTANT** agrees to report each violation to the PPC/MPO and understands and agrees that the PPC/MPO will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The **CONSULTANT** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**6. Clean Air** - The **CONSULTANT** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The **CONSULTANT** agrees to report each violation to the PPC/MPO and understands and agrees that the PPC/MPO will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The **CONSULTANT** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**7. Recycled Products** – Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**8. Lobbying** – Clause and specific language therein are mandated by 49 CFR Part 19.

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - **CONSULTANTs** who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." The **CONSULTANT** agrees that no Federal appropriated funds have been paid or will be paid by or on the behalf of the **CONSULTANT**, to any person for influencing or attempting to influence any



officer or any 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.

If any funds other than Federal appropriated funds have been paid by the **CONSULTANT** to any person 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 Agreement, the undersigned will complete and submit Exhibit F Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBCONSULTANTS shall certify and disclose accordingly, pursuant to Exhibit F (Certification Regarding Lobbying).

**9. No Obligation by the Federal Government to Third Parties** – The PPC/MPO and **CONSULTANT** acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying **AGREEMENT**, absent the express written consent by the Federal Government, the Federal Government is not a party to this **AGREEMENT** and shall not be subject to any obligations or liabilities to the PPC/MPO, **CONSULTANT**, or any other party (whether or not a party to that **AGREEMENT**) pertaining to any matter resulting from the underlying **AGREEMENT**.

The **CONSULTANT** agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**10. Program Fraud and False or Fraudulent Statements and Related Acts** - The **CONSULTANT** acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this **TASK WORK ORDER**. Upon execution of the underlying **AGREEMENT**, the **CONSULTANT** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this **TASK WORK ORDER** work is being performed. In addition to other penalties that may be applicable, the **CONSULTANT** further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the **CONSULTANT** to the extent the Federal Government deems appropriate.

The **CONSULTANT** also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the **CONSULTANT**, to the extent the Federal Government deems appropriate.

The **CONSULTANT** agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**11. Government-Wide Debarment and Suspension** - This **AGREEMENT** is a covered transaction for purposes of 49 CFR Part 29. As such, the **CONSULTANT** is required to verify that none of the **CONSULTANT**, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The **CONSULTANT** is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this **AGREEMENT**, the **CONSULTANT** certifies as follows:

The certification in this clause is a material representation of fact relied upon by the PPC/MPO. If it is later determined that the **CONSULTANT** knowingly rendered an erroneous certification, in addition to remedies available to the PPC/MPO, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The **CONSULTANT** agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The **CONSULTANT** further agrees to include a provision requiring such compliance in its lower tier covered transactions and will review the "Excluded Parties Listing System" at the following Internet address: <http://epls.arnet.gov> before entering into any third party or subagreement.

**12. Incorporation of Federal Transit Administration (FTA) Terms** – The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding **AGREEMENT** provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1F](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this **AGREEMENT**. The **CONSULTANT** shall not perform any act, fail to perform any act, or refuse to comply with any MPO requests which would cause the MPO to be in violation of the FTA terms and conditions.

**13. Access to Records** - Upon request, the **CONSULTANT** agrees to permit the Secretary of Transportation; the PPC/MPO; the Comptroller General of the United States; and, if appropriate or their authorized representatives to inspect all **TASK WORK ORDER** work, materials, payrolls, and other data, and to audit the books, records, and accounts of the **CONSULTANT** and Third Party contractors pertaining to the **TASK WORK ORDER** as required by 49 U.S.C. § 5325(g).

**14. Federal Changes** – The **CONSULTANT** shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA [Master Agreement](#) as they may be amended or promulgated from time to time during the term of this **AGREEMENT**. The **CONSULTANT**'s failure to so comply shall constitute a material breach of this **AGREEMENT**.

**15. Termination** – All services are to be performed by the **CONSULTANT** to the satisfaction of the PPC/MPO's Executive Director based on the requirements of Exhibit A. The PPC/MPO's Executive Director shall decide all questions and disputes, of any nature whatsoever, that may arise in the execution and fulfillment of the services provided for under this **AGREEMENT**.

**a. Convenience (General Provision)** The PPC/MPO may terminate this **AGREEMENT**, in whole or in part, at any time upon thirty day's (30) written notice to the **CONSULTANT**. The **CONSULTANT** shall be paid its costs, including **AGREEMENT** close-out costs, and profit on work performed up to the time of termination. The **CONSULTANT** shall promptly submit its



invoice to the PPC/MPO for costs incurred up to the effective date of termination, provided **CONSULTANT** has not been previously reimbursed for such costs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the **CONSULTANT** fails to perform in the manner called for in the **AGREEMENT**, if the **CONSULTANT** is indicted or has direct information issued against him for any crime arising out of or in conjunction with any work being performed for or on behalf of the PPC/MPO, if the **CONSULTANT** is placed in either voluntary or involuntary bankruptcy, or if the **CONSULTANT** fails to comply with any other provisions of the **AGREEMENT**, the PPC/MPO may terminate this **AGREEMENT** for default. Termination shall be effected by serving a notice of termination on the **CONSULTANT** setting forth the manner in which the **CONSULTANT** is in default. The **CONSULTANT** will only be paid the **AGREEMENT** price for services performed in accordance with the manner of performance set forth in the **AGREEMENT**.

If it is later determined by the PPC/MPO that acts beyond the **CONSULTANT'S** control led to the breach or default, including but not limited to a strike, fire, or flood, the PPC/MPO, after setting up a new delivery of performance schedule, may allow the **CONSULTANT** to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The PPC/MPO in its sole discretion may, in the case of a termination for breach or default, allow the **CONSULTANT** within thirty (30) days of said notice of termination in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the **CONSULTANT** fails to remedy to PPC/MPO satisfaction the breach or default of any of the terms, covenants, or conditions of this **AGREEMENT** within thirty (30) days after receipt by the **CONSULTANT** of written notice from the PPC/MPO setting forth the nature of said breach or default, the PPC/MPO shall have the right to terminate the **AGREEMENT** without any further obligation to the **CONSULTANT**. Any such termination for default shall not in any way operate to preclude the PPC/MPO from also pursuing all available remedies against the **CONSULTANT** and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that the PPC/MPO elects to waive its remedies for any breach by **CONSULTANT** of any covenant, term or condition of this **AGREEMENT**, such waiver by the PPC/MPO shall not limit the PPC/MPO's remedies for any succeeding breach of that or of any other term, covenant, or condition of this **AGREEMENT**.

**16. Breaches and Dispute Resolution** – All services are to be performed by the **CONSULTANT** to the satisfaction of the PPC/MPO's Executive Director based on the requirements of Exhibit A. The PPC/MPO's Executive Director shall decide all initial questions and disputes, of any nature whatsoever, that may arise in the execution and fulfillment of the services provided for under this **AGREEMENT**. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the **CONSULTANT** mails or otherwise furnishes a written appeal to the PPC/MPO Executive Director.

**a. Appeals** – After properly submitting an appeal in accordance with the provisions herein, the **CONSULTANT** shall be afforded an opportunity to be heard by the Executive Director and to offer evidence in support of its position. The decision of the PPC/MPO Executive Director shall be binding upon the **CONSULTANT** and the **CONSULTANT** shall abide by the decision.

**b. Performance During Dispute** - Unless otherwise directed by the PPC/MPO, the **CONSULTANT** shall continue performance under this **AGREEMENT** while matters in dispute are being resolved.

**c. Claims for Damages** - Should either party to the **AGREEMENT** suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**d. Additional Remedies** - After the **CONSULTANT** exhausts all administrative remedies with the **MPO/PPC** as outlined above, the **CONSULTANT** may appeal to the **FTA**. Reviews of protests by the **FTA** are completely discretionary and will be limited to: (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest, or (2) violations of Federal law or regulation. An appeal to the **FTA** must be received within five (5) working days of the date the protestor learned or should have learned of an adverse decision by the grantee or other basis of appeal to **FTA**. The **CONSULTANT** may also proceed to nonbinding arbitration. The **CONSULTANT** is hereby on notice that if arbitration is pursued, the **FTA** must concur in any arbitration award before it becomes final and Federal Funds are released. Only if the administrative remedies discussed herein have been exhausted and nonbinding arbitration has been pursued but unsuccessful shall the **CONSULTANT** have the right to bring a claim in a court of competent jurisdiction within the State of Florida. Venue shall be in Pinellas County, Florida.

**e. Rights and Remedies** - The duties and obligations imposed by the **AGREEMENT** documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the **PPC/MPO** or **CONSULTANT** shall constitute a waiver of any right or duty afforded any of them under the **AGREEMENT**, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **17. Patent and Rights Data-**

A. Rights in Data – The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

a. Except for its own internal use, the **CONSULTANT** may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may **CONSULTANT** authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the **CONSULTANT** using Federal assistance in whole or in part provided by FTA.

c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the **CONSULTANT** performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the **CONSULTANT's** use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

d. Unless prohibited by state law, upon request by the Federal Government, the **CONSULTANT** agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the **CONSULTANT** of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The **CONSULTANT** shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

f. Data developed by the **CONSULTANT** and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the **CONSULTANT** identifies that data in writing at the time of delivery of the contract work.

g. Unless FTA determines otherwise, the **CONSULTANT** agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the **CONSULTANT's** status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the **CONSULTANT** agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4. The **CONSULTANT** also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights – The following requirements apply to each contract involving experimental, developmental, or research work:

1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the **CONSULTANT** agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the **CONSULTANT's** status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the **CONSULTANT** agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The **CONSULTANT** also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

#### **SECTION 14. PROHIBITION AGAINST CONTINGENT FEE.**

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

#### **SECTION 15. TRUTH IN NEGOTIATIONS.**



- 15.0 In connection with this agreement, the **CONSULTANT** is required to complete Exhibit D “Truth in Negotiations” certificate.

#### **SECTION 16. SUCCESSORS AND ASSIGNS.**

- 16.0 The **CONSULTANT** shall not assign or transfer its interest in this **AGREEMENT** without the written consent of the PPC/MPO.

#### **SECTION 17. DEBARMENT AND SUSPENSION.**

- 17.0 This **AGREEMENT** is a covered transaction for purposes of 49 CFR Part 29. As such, the **CONSULTANT** is required to verify that none of the **CONSULTANT**, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The **CONSULTANT** is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this **AGREEMENT**, the **CONSULTANT** certifies as follows:

The certification in this clause is a material representation of fact relied upon by the PPC/MPO. If it is later determined that the **CONSULTANT** knowingly rendered an erroneous certification, in addition to remedies available to the PPC/MPO, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The **CONSULTANT** agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The **CONSULTANT** further agrees to include a provision requiring such compliance in its lower tier covered transactions and will review the “Excluded Parties Listing System” at the following Internet address: <http://epls.arnet.gov> before entering into any third party or subagreement.

Failure to comply with this provision of the **AGREEMENT** shall be considered a material breach and shall be grounds for immediate termination of the **AGREEMENT**.

#### **SECTION 18. INDEPENDENT CONSULTANT**

- 18.0 The **CONSULTANT** acknowledges that it is functioning as an independent **CONSULTANT** in performing under the terms of this **AGREEMENT**, and it is not acting as an employee of PPC/MPO.

#### **SECTION 19. NOTICE AND CONTACTS.**

- 19.0 All notices required by law and by this **AGREEMENT** to be given by one party to the other shall be in writing and shall be sent to the following respective addressees:

**PPC/MPO:**  
Whit Blanton, PPC/MPO Executive Director





310 Court Street, 2<sup>nd</sup> Floor  
Clearwater, FL 33756

**CONSULTANT:**

Jared Schneider  
Kimley-Horn and Associates, Inc.  
655 Franklin Street, Suite 150  
Tampa, FL 33602  
Phone: (813) 635-5587  
Email: jared.schneider@kimley-horn.com

If a different representative is designated after execution of this **AGREEMENT**, notice of the new addressees will be made in writing.

**SECTION 20. CONFLICT OF INTEREST.**

- 20.0** By accepting award of this **AGREEMENT**, the **CONSULTANT**, which shall include its Executive Directors, officers and employees, represents that it presently has no interest in and shall acquire no interest, either directly or indirectly, in any business or activity which would conflict in any manner with the performance of services required hereunder, including as described in the **CONSULTANT'S** own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes, but is not limited to, any direct or indirect financial interest in any of the material and equipment manufacturers, suppliers, distributors, or consultants who will be eligible to supply material and equipment for the **TASK WORK ORDER** for which furnishing its services is required hereunder.
- 20.1** The **CONSULTANT** further covenants and agrees that, when a former PPC/MPO employee is employed by the **CONSULTANT**, the **CONSULTANT** will require that strict adherence by the former employee of, Section 112.3185, Florida Statutes, is a condition of employment of said former employee. These Statutes will by reference be made a part of this **AGREEMENT** as though set forth in full. The **CONSULTANT** agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this **AGREEMENT**.
- 20.2** Representation of an applicant of a local site plan or proposed amendment of a zoning or future land use map designation by the **CONSULTANT** may be considered a conflict of interest if the PPC/MPO is providing technical assistance to the applicable local government. Approval by PPC/MPO staff is necessary prior to **CONSULTANT** agreeing to represent a developer in support of a request seeking future land use map/zoning amendments or site plan approval from local governments within Pinellas County.
- 20.3** If, in the sole discretion of the PPC/MPO's Executive Director or designee, a conflict of interest is deemed to exist or arise during the term of the **AGREEMENT**, the PPC/MPO's Executive Director or designee may cancel this **AGREEMENT**, effective upon the date so stated in the Written Notice of Cancellation, without penalty to the PPC/MPO.

**SECTION 21. EFFECTIVE DATE, EXTENT AND TERM OF AGREEMENT.**

- 21.0 This **AGREEMENT** will become effective upon proper and final execution, as reflected by the date first written above (Effective Date).
- 21.1 This **AGREEMENT** shall be for an initial term of two (2) years, which shall commence upon the Effective Date as defined herein. The PPC/MPO shall have the option to renew this **AGREEMENT** for two (2) additional terms of two (2) years each upon mutual written agreement of the Parties.

#### **SECTION 22. PUBLIC ENTITY CRIMES.**

- 22.0 The **CONSULTANT** is directed to the Florida Public Entity Crimes Act, Section 287.133, Florida Statutes, specifically Section 2(a), and the PPC/MPO's requirement that the **CONSULTANT** comply with it in all respects prior to and during the term of the **AGREEMENT**, as provided in Exhibit B (Public Entities Crime Form).

#### **SECTION 23. DOCUMENTS COMPRISING AGREEMENTS.**

- 23.0 This **AGREEMENT** represents, together with all Exhibits, the entire written **AGREEMENT** between the PPC/MPO and the **CONSULTANT** and may be amended only by written instrument signed by both the PPC/MPO and the **CONSULTANT**.

#### **SECTION 24. FINAL CLOSEOUT.**

- 24.0 The PPC/MPO may perform or have performed a final audit of the records of the **CONSULTANT** and any or all SUBCONSULTANTS to support the compensation paid the **CONSULTANT** for the **TASK WORK ORDER**. The audit would be performed as soon as practical after completion and acceptance of all contracted services. The final payment to the **CONSULTANT** may be adjusted for audit results.
- 24.1 Subsequent to the satisfactory completion of all services, a Certificate of Completion shall be prepared stating the total compensation due the **CONSULTANT**, the amount previously paid, and the difference, if any. Upon execution of the Certificate of Completion, the **CONSULTANT** shall either submit a final invoice for any amount due or refund to the PPC/MPO any overpayment, provided the net difference is not zero.

#### **SECTION 25. GOVERNING LAW AND AGREEMENT EXECUTION.**

The laws of the federal government and the State of Florida shall govern this **AGREEMENT**.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

PINELLAS PLANNING COUNCIL AND PINELLAS METROPOLITAN PLANNING ORGANIZATION

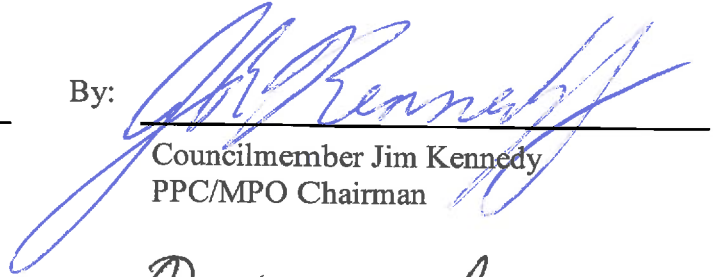
Attest:

By:



Whit Blanton, FAICP  
PPC/MPO Executive Director

By:



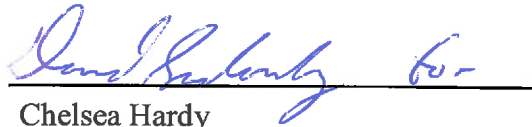
Councilmember Jim Kennedy  
PPC/MPO Chairman

By:



Commissioner Joanne "Cookie" Kennedy  
PPC/MPO Secretary

Approved as to form:



By:

Chelsea Hardy  
Assistant County Attorney

KIMLEY-HORN AND ASSOCIATES, INC.

Attest:

By:



Print Name: SCOTT W. GILNER, PE

Title: VICE PRESIDENT / ASST SECRETARY

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **1. Purpose**

The Pinellas Planning Council (PPC) and Pinellas County Metropolitan Planning Organization (MPO), collectively referred to as “PPC/MPO”, require the services of consultants to provide support to professional planning services for the PPC, MPO and local government jurisdictions.

The MPO receives grant funding from the Federal Highway Administration, the Federal Transit Administration, the Florida Department of Transportation and the Florida Commission for the Transportation Disadvantaged. The Unified Planning Work Program (UPWP) details the work the MPO performs with this grant funding and is the basis for work conducted under MPO tasks. The PPC has an established budget that may be used to develop work assignments or augment those performed for the MPO to address land use and transportation together. In addition to the mandated land use and transportation planning functions, the PPC/MPO is focused on the integration of land use and transportation planning. The unified organization has identified three Pinellas Strategic Planning and Operations and Topics (SPOTlight) for 2016-2018: US 19 Corridor, Beach Access and the Gateway/Mid-County area. The next section outlines services that may be assigned to Consultant(s) under one or more general planning consultant contracts for the PPC/MPO or participating local governments.

#### **2. Services**

The PPC/MPO has five general planning “sub” areas that require the support of general planning consultants including multimodal transportation planning and analysis, economic analysis, communications and public involvement, urban design, and land use/redevelopment. The general planning services that support the PPC/MPO’s land use and transportation planning functions, and are necessary to support all five “sub” areas include, but are not necessarily limited to:

- SPOTlight area planning
- Program development
- Public participation
- Land use and socioeconomic data
- Transportation system monitoring and database management
- Financial resources and legislation monitoring
- Systems planning
- Congestion management, safety and operations
- Public transportation planning
- Transportation disadvantaged planning
- Bicycle and pedestrian planning
- Local government technical assistance
- Corridor planning
- The Transportation Improvement Program (TIP)
- The Long Range Transportation Plan (LRTP)
- Scenario planning
- Environmental planning, including air quality
- Regional planning
- Growth management and comprehensive planning
- Redevelopment planning and regulation
- Countywide Land Use Plan support
- Research, best practices and case studies

Descriptions of the sub area(s) for which the **CONSULTANT** has been awarded are listed below:

**1. Multimodal Transportation Planning and Analysis**

The following lists anticipated planning efforts related to multimodal transportation planning and analysis. This includes, but is not limited to:

- Modeling and Simulation
- Bicycle and Pedestrian Activities
- Transit Service and Operations
- Transit Capital Facilities
- Transportation Disadvantaged
- Data Collection, Development and Management
- Access Management
- Mobility and Demand Management
- Parking and Circulation
- Intelligent Transportation Systems
- Waterborne Transportation
- Feasibility Studies
- Complete Streets
- Resilience and Sustainability
- Safety Assessments
- Freight Analysis
- Corridor Studies

**2. Communications and Public Involvement**

Communication and public involvement support may include, but is not limited to:

- Community Outreach, Engagement and Facilitation
- Graphic Design and Visualization
- Writing, Editing and Digital Publication
- Digital and Thematic Storytelling
- Website Design and Maintenance
- Market and Survey Research
- Public and Media Relations



**EXHIBIT B**

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(A), FLORIDA STATUTES ON  
PUBLIC ENTITY CRIME**

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER  
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to PINELLAS COUNTY MPO / PINELLAS PLANNING COUNCIL

By SCOTT W. GILNER, PE VICE PRESIDENT / ASST SECRETARY  
(print this individual's name and title)

for KIMLEY-HORN AND ASSOCIATES, INC.  
(print name of entity submitting statements)

whose business address is 655 N FRANKLIN ST, TAMPA, FL 33602

and if applicable whose Federal Employer Identification Number (FEIN) is 56-0885615

If the entity has no FEIN, include the Social Security Number of the individual signing this sworn Statement:

N/A

2. I understand that a "public entity crime" as defined in paragraph 287.133(1)(a), Florida Statutes, mean a violation of any state or federal law by a person with respect to and directly related to the transactions of business with any public entity or with an agency or political subdivision of any other state or with the United States including, but not limited to any bid or contract for goods or services to be provided to any public entity or any agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a Jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in paragraph 287.133(1)(a), Florida Statutes, means:

1. A predecessor or successor of a person convicted of public entity crime; or  
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in a relation to the entity submitting this sworn statement. (Please indicate which statement applies).

X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or any affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months.

\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months.

AND (Please indicate which additional statement applies).

\_\_\_\_ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime within the past 36 months. However, there has been a subsequent proceeding before a Hearing Officers of the State of Florida, Division of Administrative Hearings and the Final Order by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attached is a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THE PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED AND FOR THE PERIOD OF THE CONTRACT ENTERED INTO, WHICHEVER PERIOD IS LONGER. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Scott W. Gilner

(Signature)

Print Name: SCOTT W. GILNER, PE

Title: VICE PRESIDENT / ASST SECRETARY

City of Tampa

STATE OF FLORIDA

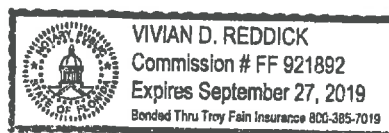
Sworn and subscribed before me this 4<sup>th</sup> day of May, 2016 by

Scott Gilner who is Personally known to me

Or who produced identification - \_\_\_\_\_  
(Type of Identification)

Vivian D. Reddick  
(Signature) Notary Public—State of Florida

Vivian D. Reddick  
(Printed, typed or stamped commissioned name of notary public)



My commission expires September 27, 2019 (SEAL)

## **EXHIBIT C**

### **HOURLY RATES**

#### **PPC/MPO Loaded Rate Structure**

<b>Classification</b>	<b>Low</b>	<b>High</b>
Chief Professional/Project Director	\$ 160	\$ 275
Project Manager	\$ 135	\$ 218
Senior Professional	\$ 108	\$ 201
Project Professional	\$ 70	\$ 160
Professional	\$ 71	\$ 133
Senior Specialist	\$ 183	\$ 449
Specialist	\$ 120	\$ 231
Senior Technician	\$ 72	\$ 130
Technician/Analyst	\$ 55	\$ 90
Secretary/Clerical	\$ 55	\$ 81

- (1) These rates are loaded (includes overhead, fringe benefits, facility capital cost of money, operating margin or out-of-pocket expenses)
- (2) The hourly rate structure may be re-negotiated at renewal periods of the contract, or at the discretion of the PPC/MPO.
- (3) This rate structure applies to the **CONSULTANT** and their SUBCONSULTANTS: Placemaker Design Studio and Vrana Consulting.
- (4) Individual rates within this structure/range will be determined at the time of each **TASK WORK ORDER** assignment.

**EXHIBIT D**

**TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with this Agreement dated 5/4/2016, between the MPO and the Consultant, the Consultant herewith certifies that:

- 1) The rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and correct at the time of contracting.
- 2) Any and all limitations on current or future years' contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting issues are encountered, are disclosed herein.
- 3) Any and all services to be provided under the above-referenced Agreement at rates or terms that are not customary are described herein.

Hourly compensation rate is as specified in Exhibit C of this Agreement.  
Standard compensation rate for this type engagement is as negotiated.

KIMLEY-HORN AND ASSOCIATES, INC.  
CONSULTANT

By: 

Date: 5/4/2016

## EXHIBIT E

### **TITLE VI/ NONDISCRIMINATION POLICY STATEMENT**

The KIMLEY-HORN AND ASSOCIATES, INC. (Name of Consultant) assures the Florida Department of Transportation and the PPC/MPO that no person shall on the basis of race, color, national origin, sex, age, disability, family or religious status, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 and the Florida Civil Rights Act of 1992 (collectively referred to as the "Acts") be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity.

The KIMLEY-HORN AND ASSOCIATES, INC. (Name of Consultant) further agrees to the following responsibilities with respect to its programs and activities:

1. Designate a Title VI Liaison that has a responsible position within the organization and access to the Consultant's Chief Executive Officer.
2. Issue a policy statement signed by the Chief Executive Officer, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the Consultant's organization and to the general public. Such information shall be published where appropriate in languages other than English.
3. Insert the clauses of *Appendix A* of this agreement in every contract subject to the Acts and associated regulations
4. Develop a complaint process and attempt to resolve complaints of discrimination. Complaints against the Consultant shall immediately be forwarded to the FDOT District Title VI Coordinator.
5. Participate in training offered on Title VI and other nondiscrimination requirements.
6. If reviewed by FDOT or USDOT, take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed ninety (90) calendar days.
7. Have a process to collect racial and ethnic data on persons impacted by your firm's programs.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal funds, grants, loans, contracts, properties, discounts or other federal financial assistance under all programs and activities and is binding. The person whose signature appears below is authorized to sign this assurance on behalf of the Consultant.

Dated 5/4/2016

By 

Print Name SCOTT W. GILNER, PE

Title VICE PRESIDENT / ASST SECRETARY



## TITLE VI APPENDIX A of EXHIBIT E

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- (1.) **Compliance with Regulations:** The Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- (2.) **Nondiscrimination:** The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subConsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3.) **Solicitations for Subconsultants, including Procurements of Materials and Equipment:** In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- (4.) **Information and Reports:** The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information the Consultant shall so certify to the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
  - a. withholding of payments to the Consultant under the contract until the Consultant complies, and/or
  - b. cancellation, termination or suspension of the contract, in whole or in part.

- (6.) **Incorporation of Provisions:** The Consultant shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the *Florida Department of Transportation*, the *Federal Highway Administration*, *Federal Transit Administration*, *Federal Aviation Administration*, and/or the *Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a sub-Consultant or supplier as a result of such direction, the Consultant may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT F

### **49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (*To be submitted with each bid or offer exceeding \$100,000*)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Consultant, KIMLEY-HORN AND ASSOCIATES, INC. (name), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

 (signature)

Print Name: SCOTT W. GILNER, PE

Title: VICE PRESIDENT / ASST SECRETARY

Date: 5/4/2016