



## Procurement by Competitive Proposals

### FORWARD PINELLAS LEVEL OF SERVICE DATABASE DEVELOPMENT AND MAINTENANCE #18-01

Information on all Forward Pinellas procurements is available online at [forwardpinellas.org](http://forwardpinellas.org).

- 1. Purpose and Services.** Development and maintenance of a database to collect roadway traffic count data and calculate annual level of service grades on monitored roadways. The full scope of services is shown in Exhibit A.
- 2. Proposal Requirements.** Each respondent must contain the name and address of the submitting firm, the email address and phone number information for the proposed project manager, and a Certificate of Insurance.

In addition, the following requirements must be addressed:

- Key personnel, project manager, titles and/or classifications with team information and qualifications;
- A written narrative describing demonstrated understanding of the scope of services, project approach and schedule, technical strengths and unique concepts;
- Examples of relevant project experience;
- Minimum of three references for whom you have performed similar work;
- Disadvantaged Business Enterprise (DBE) certification and participation status; and
- Price

No more than 30 pages may be submitted. Resumes and certificates of insurance will not count towards the page limit and should be included as part of an appendix. Proposals may include a team with sub-consultants when sub-consultants provide complementary services to the prime consultant.

- 3. Response Evaluation.** Respondents must be licensed by the State to do business in Florida and be qualified to perform the advertised work requirements.

The award shall be made to a responsible firm whose proposal is most advantageous to Forward Pinellas, taking into consideration price and other relevant factors, listed below along with total possible points. Cost scoring is automatically assigned based on the cost spread. Disadvantaged Business Enterprise (DBE) participation is automatically assigned based on the use of DBEs. All proposals must address the relevant factors, which will be used in the evaluation process.

Evaluation of all firms:

- Demonstrated Understanding of the Project (0-25 points)
- Proposed Approach to Task Activities, Technical Strengths, and Unique Concepts Related to the Project (0-45 points)
- Experience and Ability of Consulting Team (0-15 points)

- Cost (0-10 points)
- DBE Participation (0-5 points)

Evaluation of oral presentations:

- Experience, Understanding and Approach of the Project (0-50 points)
- Project/Team Management (0-30 points)
- Presentation Quality and Clarity (0-20 points)

The award shall take into account all of the evaluation factors, for a possible total of 190 points.

**4. Contact and Submittal Information.** All correspondence concerning this procurement must be submitted to:

Chelsea Favero, AICP  
 310 Court Street  
 Clearwater, Florida 33756  
[Cfavero@forwardpinellas.org](mailto:Cfavero@forwardpinellas.org)  
 (727) 464-5644

Questions are allowed and all responses will be posted to the Forward Pinellas website. All questions and corresponding responses will follow the schedule below.

Interested firms must mail four hard copy responses and one electronic copy (flash drive or CD) in pdf format to arrive no later than the scheduled due date and time.

**5. Selection Process and Schedule.** A selection committee of Forward Pinellas staff shall review and rank the proposals. Proposals are to remain in effect for 120 calendar days from the date of submission. Forward Pinellas reserves the right to reject any or all proposals, or negotiate changes to the proposals whenever such rejection, waiver or negotiations is in the best interest of Forward Pinellas.

Forward Pinellas reserves the right to change the schedule below as necessary. Any changes will be posted to the Forward Pinellas website.

Procurement issued	August 11, 2018
Questions due	August 17, 2018, 4 p.m.
Responses to questions posted	August 22, 2018 4 p.m.
Proposals due to Forward Pinellas	September 10, 2018, 4 p.m.
Selection committee meets to shortlist firms for presentation	September 17, 2018, 1 p.m.
Oral presentations for shortlisted firms	September 24-25, 2018
Selection committee meeting	September 25, 2018, 2 p.m.
Recommendation to Forward Pinellas Board	October 10, 2018 1 p.m.

Oral presentations for shortlisted firms will be limited to 45 minutes followed by 15 minutes of questions and answers.

- 6. Additional Requirements.** The Level of Service Database Development and Maintenance is anticipated to be funded by federal grants that Forward Pinellas received as the metropolitan planning organization for Pinellas County. The following requirements are required of proposers and are reflected in the draft agreement (Exhibit B). Proposers are strongly encouraged to notify Forward Pinellas in advance of the deadline with any proposed changes to the Exhibit B. Proposed changes shall not be taken into account during the selection process, but may not be accepted by Forward Pinellas.

**Notification of Crime Conviction:** Each applicant shall notify Forward Pinellas within 30 days after a conviction of a contract crime applicable to it or any officers, directors, executive, shareholders active in management, employees, or agents of its affiliates. Under Section 337.164, F.S., the privilege of conducting business with Forward Pinellas shall be denied to applicants so convicted until such applicant is properly reinstated pursuant to Section 337.165, F.S., and Rule 14-75, F.A.C.

**Federal Debarment:** By signing and submitting a Proposal, the firm certifies that no principal (which includes officers, directors, or executives) is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation on this transaction by any federal department or agency.

**Equal Opportunity and Disadvantaged Business Enterprise Program Statement:** Forward Pinellas, as the metropolitan planning organization for Pinellas County, does not discriminate on any basis, as required by 49 USC 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex or age in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended 42 USC 2000d to 2000d-4, and Title 49 CFR, Part 21. Forward Pinellas ensures, in accordance with 49 CFR Part 26, that certified Florida Department of Transportation DBE participants have an equal opportunity to receive and participate in FDOT assisted contracts. More information on the MPO's DBE Program may be found on the Forward Pinellas website.

**Lobbying.** Lobbying of Forward Pinellas employees and elected officials regarding this procurement by any member of a proposer's staff, or those people who are members of, or employed by, any legal entity affiliated with an organization that is responding to the procurement is strictly prohibited. The purpose of this prohibition is to protect the integrity of the procurement process by shielding it from undue influences prior to the contract award, or the competitive selection process is otherwise concluded. Such actions shall cause your proposal, or the proposal you are supporting, to be rejected.

**Truth in Negotiations:** The firm certifies to the truth-in-negotiation and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original contract amount and any additions thereto shall be adjusted to exclude any significant sums where the Forward Pinellas determines that costs were increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

- 7. Dispute Resolution.** The following procedures apply to protests and the resolution of disputes, based on the Forward Pinellas Internal Control Structure Policy Manual.

### Applicability

Any actual or prospective bidder or proposer, or contractual party, who is allegedly aggrieved in connection with the issuance of a bid/proposal or pending award or validly executed contract may protest to the Executive Director.

### Filing

A formal written protest shall be filed no later than 5:00pm on the fifth (5th) full business day after issuance of the bid or proposal, or alleged violation of a contract, unless altered by the specific provisions in the bid/request for proposal or contract. Written protest shall be addressed to the Forward Pinellas Executive Director. A protest is considered filed when the Executive Director actually receives it. Failure to file a formal written protest within the time period specified shall constitute a waiver of the right to protest. If the deadline to file falls on a County or legal holiday, the deadline shall be extended to 5:00pm of the next full business day.

### Written protest requirements

The formal written protest shall identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protesting party deems applicable to such grounds.

### Authority to resolve

The Executive Director shall have authority to resolve the protest in a fair and equitable manner and shall render a written decision stating the reason for the action with a copy furnished to the protesting party and all substantially affected persons no later than 5:00pm on the fifth (5th) full business day after the filing thereof. If the deadline to respond falls on a County or legal holiday, the deadline shall be extended to 5:00pm of the next full business day.

If it is determined that the solicitation or award is in violation of law or regulations and procedures of the bid/proposal package, the Executive Director shall immediately cancel or revise the solicitation or award as deemed appropriate. If the Executive Director determines that the contract has been breached, the Executive Director shall take immediate steps to cure said breach.

If it is determined that the solicitation or award shall be upheld, or that the contract at issue has not been breached, the Executive Director shall issue a decision in writing pursuant to the requirements herein, which shall be final and conclusive as to Forward Pinellas, unless any further action is taken with the appropriate Federal entity or the protester commences an action in court.

The Executive Director shall inform the Board of the protest, at a minimum, but may seek Board approval or guidance in the resolution process.

### Sole remedy/exhaustion of administrative remedies

These procedures shall be the sole remedy for challenging an award of bid and the terms of the final contract. A protestor must seek a remedy pursuant to these procedures before pursuing a protest with the applicable Federal agency.

### Stay of procurement and performance during protests

There shall be no stay of procurement or contract performance during protests.

**Exhibit A**

## Forward Pinellas

### Database Development and Management

#### Scope of Services

In its role as the metropolitan planning organization and planning council for Pinellas County, Forward Pinellas maintains a database of transportation and land use data to help support countywide multimodal planning. Currently managed in-house, the existing database used by Forward Pinellas is functionally obsolete, and with turnover in existing staff that manages the database, an opportunity presents itself for the agency to explore the development of a new database that can satisfy the existing transportation inventory needs, while also being adaptable to additional multimodal considerations in the future. Forward Pinellas is seeking proposals from qualified consultants or consultant teams capable of providing professional consulting services for the development of a new transportation database consistent with the parameters listed below.

#### **Task 1 – Development of Database**

Consultant will develop a traffic data management database for Forward Pinellas with the capability to handle the needs listed below. The database can be either Cloud based or stored on internal servers, but must be compatible with standard operating machines and computer software programs. Initially, Forward Pinellas is in need of a database to handle traffic count data and roadway level of service information, but the system should be expandable to handle future multimodal data and analysis needs.

#### Database Needs:

##### 1. Traffic Count Processing Module

Forward Pinellas has historical records of traffic counts on the roadways of Pinellas County, collected internally and by other local and regional agency partners. These historical records must be imported into the new database and the integrity of their data maintained for historical reference. On an annual basis, agency partners will be providing traffic count data. The database should provide for the ability for these partners to remotely upload their traffic count information (date and average daily traffic) and locations (count station). These locations must match the locations of the historical count stations automatically, to the greatest extent possible. The Consultant will be responsible for ensuring these locations match and that the count data is consistent with historical trends to avoid any data errors. The database will have an export function so that Forward Pinellas will have the ability to access and download any traffic count data for each location included in the database. Seasonal adjustments factors annually supplied by FDOT will also need to be included in this module of the database so that accurate AADT can be calculated. The traffic count module will need to be able to maintain a master list of approximately 813 count stations including 435 active count stations (assigned for level of service road segments measures) with the option of adding more count stations in the future.

## 2. Automobile Level of Service Module

The database must be able to process level of service information on all monitored roadways for existing conditions using the latest FDOT generalized tables (currently 2018 tables, future updates to these tables will be integrated into this database under a separate, one-time work order, outside of the scope of this project). The LOS analysis method will be Peak Hour Directional, Urbanized Areas, Table 7, and will utilize the input value assumptions of Table 7. The analysis will be linked to the Federal Functional Classification of the roadway. Forward Pinellas staff will be using the database to develop an annual level of service report of existing conditions and this data should be available by July each year and catalogued on an annual basis to retain historical records. The existing roadway segmentation of approximately 2217 that is included in the existing Forward Pinellas database must be maintained going forward for historical reporting purposes. Approximately 1297 of the 2217 road segments are monitored roads for LOS measures, the database must be able to expand LOS measures to the other road segments.

## 3. Reporting Mechanisms

The database must include the ability to report data on an as-needed basis, including traffic count information and roadway level of service data. This data must be available for the most recent year and the twenty years prior for count station data and ten years prior for level of service data. Data must be available for download in both tabular (Microsoft Excel) and GIS file format to allow for mapping of the data outputs. Also the database must have the capability of providing growth rates of AADT's, perhaps at five, ten, fifteen, and twenty year periods.

## 4. Other considerations

In the future, Forward Pinellas has the desire to incorporate into the database and reporting mechanisms, data for other modes of transportation, including sidewalk, bicycle facility and transit data. The database should have the ability to be expanded in the future to include these other modes of travel. The ability to import crash data should also be considered for a future phase. Such future data incorporation needs may include, but may not be limited to, the following:

- Segments of roadway with sidewalk and % coverage
- Miles of sidewalk coverage
- % of congested roadways with sidewalk coverage
- Segments of roadway with bicycle facilities and % coverage
- Miles of bicycle facility coverage
- Segments of roadway with transit and % coverage
- Miles of transit coverage
- % of congested roadways with transit coverage
- % of heavy vehicle classification
- Traffic study summary reports from interval data
- Crash rates on road segments



## **Task 2 – Database Management**

The Consultant will be responsible for ensuring that the integrity of the data included in the database remains at all times and that the database is operational and available to staff at all times. For any periods of time that the database must be down for maintenance, Forward Pinellas must be notified at least seven (7) days prior, and any maintenance may not exceed seven (7) days.

## **Task 3 – Meetings**

Coordination meetings with Forward Pinellas staff will be included as a part of this effort, including on-going support. Meetings will be held via teleconference whenever possible. Forward Pinellas staff will be responsible for any inter-agency coordination meetings with local government partners. Consultant presentations to any advisory committees or the Board are not anticipated and should not be included as a part of this contract.

## **Deliverables – From Forward Pinellas to Consultant**

- 1.) Traffic Count Historical Data in CSV file spreadsheet
- 2.) Ten years of Level of Service GIS shape file sets (existing conditions)
- 3.) Master traffic count station GIS shape file set (includes active count stations)
- 4.) Count station assignment CSV file for LOS segmentation (data spreading)
- 5.) Once a year provide changes to existing conditions (new signals, lane counts, new road, etc.)
- 6.) Report on the adopted Federal Functional Classification of the roadway network

**Exhibit B**

AGREEMENT FOR LEVEL OF SERVICE DATABASE DEVELOPMENT AND MAINTENANCE

This agreement (**Agreement**) is entered into the \_\_\_\_ day of \_\_\_\_\_ 2018 between **Forward Pinellas**, in its role as the Pinellas County Metropolitan Planning Organization (MPO) and \_\_\_\_\_, hereafter called the **Consultant**.

**WITNESSETH:**

**WHEREAS, Forward Pinellas** determined that the **Consultant** is fully qualified to render the services contracted and as outlined herein; and

**WHEREAS, Forward Pinellas** does hereby retain the **Consultant** to furnish said services as identified in Exhibit A, attached hereto and made a part hereof; and

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

**NOW, THEREFORE, Forward Pinellas** and the **Consultant** in consideration of the mutual covenants hereinafter set forth agree as follows:

**SECTION 1. SERVICES**

The scope described and provided for under Exhibit A (Scope of Services) constitute the Scope of Services to be performed by the consultant under this **Agreement**.

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. The **Consultant** agrees to perform professional services associated with the requested work in accordance with the terms of Exhibit A. The Executive Director or assigned project manager shall furnish the **Consultant** with a Notice to Proceed specifying the work to be done and the type and amount of compensation authorized under this **Agreement**. The **Consultant** shall commence no work until receipt of a Notice to Proceed.

The **Consultant** shall provide progress reports to Forward Pinellas's Executive Director or assigned project manager at intervals established by Forward Pinellas. Forward Pinellas 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 all the details thereof. The **Consultant** agrees to hold all pertinent data and other work-related products open to the inspection of by Forward Pinellas's Executive Director or assigned project manager. All services provided by the **Consultant** must meet the intent, goals and objectives as required by state and federal regulations.

The **Consultant** agrees to begin the work in the Scope of Services in a timely manner after receiving a Notice to Proceed and shall fully coordinate work activities with Forward Pinellas and, as necessary, involved agencies and vendors, including the Florida Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration.

Any document and/or deliverable related to this **Agreement** including, but not limited to, reports, maps, database collections, etc., must be provided to **Forward Pinellas** in the original electronic format in which they were produced and in a .pdf file unless otherwise specified by **Forward Pinellas**. 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.

## **SECTION 2. KEY PERSONNEL**

The **Consultant** agrees to maintain an adequate staff of qualified personnel at all times to ensure the completion of the Scope of Services in Exhibit A. The **Consultant** agrees that whenever, for any reason, one or more of the key personnel assigned to the task work order are unavailable for performance under this **Agreement**, **Forward Pinellas** 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 a resume giving the full name, title, qualifications, and experience for all successors and/or new persons to **Forward Pinellas** prior to assignment of such personnel to perform work under this **Agreement**. Prior written consent by **Forward Pinellas** is required before the **Consultant** may use said new personnel to perform work associated with the **Agreement**.

The **Consultant** agrees to acquire and maintain sufficient legal, financial, technical and managerial capacity to plan, manage and complete the Scope of Services. The **Consultant's** personnel must be qualified and available in giving expert testimony and depositions and capable of making court appearances if requested by **Forward Pinellas**.

The **Consultant** shall not assign or transfer any work under this **Agreement** to subconsultants.

## **SECTION 3. SCHEDULE, PAYMENT AND ASSOCIATED REQUIREMENTS**

The **Consultant** shall submit electronic invoices on a monthly basis, as described in Exhibit A. All invoices must include a progress report showing the actual tasks performed and the relationship to the fee claimed.

Each invoice must include a transmittal letter signed by the **Consultant** 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 emailed to the attention of the **Forward Pinellas** Executive Director or his staff designee. Upon appropriate approval of submitted invoices, **Forward Pinellas** shall make payments as invoiced to the **Consultant** in accordance with the terms outlined in this **Agreement**.

Invoice submittals that include usage of a Disadvantaged Business Enterprise (DBE) must not DBE usage and payments on a separate line item and be supported with the DBE's original invoice and proof of payment.

**Forward Pinellas** may request additional information and evidence to support any and all invoices for fees claimed by the **Consultant** before **Forward Pinellas** processes the invoices for payment.

Pursuant to 337.162 Florida Statute, 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 endorsement.

The actual acceptance by **Forward Pinellas** of any submittal associated with this **Agreement** shall neither constitute nor imply any review or approval by **Forward Pinellas** of the services performed by the **Consultant** under the provision of this **Agreement** but shall indicate only **Forward Pinellas** acceptance of the **Consultant's** affirmation of compliance with the provision and intent of this **Agreement**.

Final 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 is the responsibility of the **Consultant** to ensure at all times that sufficient time remains in the schedule to complete services included in this **Agreement**. In the event that there have been delays which would affect the completion date for the Scope of Services, the **Consultant** shall submit to **Forward Pinellas** a written request a minimum of six weeks before the expiration of the **Agreement** 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 another, and a plan/schedule to mitigate the delay. **Forward Pinellas** will review the request and make a determination as to granting all or part of the requested extension or revised plan/schedule.

In the event time for performance expires and the **Consultant** has not requested, or if **Forward Pinellas** has denied, an extension to the completion date for services, 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 **Forward Pinellas**.

#### **SECTION 4. SERVICES TO BE FURNISHED BY FORWARD PINELLAS**

Non-Appropriation – In the event that conditions arise, such as lack of available funds, which in **Forward Pinellas's** opinion make it advisable and in the public interest to immediately terminate this **Agreement**, it may do so upon written notice. **Forward Pinellas**, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, invoices 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, **Forward Pinellas's** performance and obligation to pay under this **Agreement** is contingent upon appropriation by the Florida Department of Transportation, Federal Highway Administration or Federal Transit Administration.

**Forward Pinellas** shall provide the **Consultant** copies of all existing previously prepared files/documents pertinent to this **Agreement**, which **Forward Pinellas** may have in its possession, when available. However, the onus is on the **Consultant** to research, design, implement, hire or acquire any component or part of the project thereof deemed to be a requisite for the satisfactory completion of the said task or any phase of the Scope of Services.

Under no circumstances will **Forward Pinellas** 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**.

**Forward Pinellas** personnel shall coordinate all releases of information to the public or any other outside agencies. The **Consultant** 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 this **Agreement** without first notifying **Forward Pinellas** and securing its prior written consent.

**Forward Pinellas** agrees to pay the **Consultant** for the performance of authorized services and based on the approved hourly rates per job classification described in Exhibit A.

#### **SECTION 5. SATISFACTORY PERFORMANCE**

All services to be provided by the **Consultant** under the provisions of this **Agreement** shall be performed to the reasonable satisfaction of the **Forward Pinellas** Executive Director.

The **Consultant** shall pay **Forward Pinellas** all losses, damages, expenses, costs and attorneys' fees, including appellate proceedings that **Forward Pinellas** sustains by reason of any default, 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 6. CONSULTANT'S ACCOUNTING RECORDS**

The **Consultant** agrees to establish and maintain a set of accounts within the framework of an established accounting system and procedures that can be identified with the **Agreement**, in accordance with applicable Federal Regulations and other requirements that the Florida Department of Transportation, Federal Highway Administration or Federal Transit Administration 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 **Agreement** shall be clearly identified, readily accessible, and available to **Forward Pinellas** upon its request and, to the extent feasible, kept separate from documents not related to this **Agreement**.

All costs charged to this **Agreement**, 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.

The **Consultant** agrees to refrain from drawing checks, drafts, or orders for goods or services to be charged against the **Agreement** until the **Consultant** has received and filed in its records a properly signed voucher describing in proper detail the purpose for the expenditure.

The **Consultant** shall require all 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 7. REPORTING, RECORD RETENTION, AND ACCESS**

The **Consultant's** records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by **Forward Pinellas'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, 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**.

For the purpose of such audits, inspections, examinations and evaluations, **Forward Pinellas'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 **Forward Pinellas** to the **Consultant** pursuant to this **Agreement**.

**Forward Pinellas'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. **Forward Pinellas's** agent or authorized representative shall give the **Consultant** reasonable advance notice of intended inspections, examinations, and/or audits.

The **Consultant** agrees that all reports and other documents or information intended for public availability developed under this **Agreement** and required to be submitted to **Forward Pinellas** must be prepared and submitted in the original electronic format and in accordance with requirements that **Forward Pinellas** may specify, understanding that **Forward Pinellas** reserves the right to request records in other formats.

The **Consultant** agrees to maintain intact and readily accessible all data, documents, reports, accounting records, contracts, and supporting materials relating to the **Agreement** that the federal government, the state government or **Forward Pinellas** may require during the course of the **Agreement** and for five years thereafter. Upon request, the **Consultant** agrees 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 **Agreement** work, materials, payrolls, and other data, and to audit the books, records, and accounts of the **Consultant** pertaining to the **Agreement** as required by 49 U.S.C. § 5325(g).

The **Consultant** agrees to prepare and make available a comprehensive report or reports on the results of the **Agreement**, the conclusions reached, and the methods used, as requested.

In the event that data are lost due to fault of the **Consultant**, **Forward Pinellas** 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.

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

## **SECTION 8. AGREEMENT COMPLETION AND AUDIT.**

Within sixty (60) calendar days of the **Agreement's** completion date or termination, the **Consultant** agrees to submit a final invoice, a certification of related expenses, and third party audit reports, as applicable.

## **SECTION 9. OWNERSHIP OF DOCUMENTS.**

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 **Forward Pinellas** without restriction or limitation on their use and shall be made available upon request to **Forward Pinellas** at any time. All such documents shall be delivered to **Forward Pinellas** upon completion or termination of this **Agreement**. The **Consultant** at its own expense may retain copies for its files and internal use.

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. **Forward Pinellas** will have the right to visit the site for inspection of the work of the **Agreement** at any time. Unless changed by written agreement of the parties, said site shall be: \_\_\_\_\_.

Any and all reports, documents provided or created in connection with this **Agreement** are and shall remain the property of **Forward Pinellas**. 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 **Forward Pinellas** and shall be delivered to the Executive Director within seven (7) days of termination of the **Agreement** by either party.

## **SECTION 10. INSURANCE COVERAGE AND INDEMNIFICATION.**

The **Consultant** shall procure, pay for, and maintain at least the following insurance coverages and limits. Said insurance shall be evidenced by delivery to **Agreement** of one (1) Certificate of Insurance executed by the insurers listing coverages and limits, expiration dates and terms of policies and all endorsements whether or not required by **Forward Pinellas**, and listing all carriers issuing said policies; and (2) upon request, a certified copy of each policy, including all endorsements. The insurance requirements shall remain in effect throughout the term of the **Agreement**.

1. Worker's Compensation in at least the limits as required by law; Employers' Liability Insurance of not less than \$100,000 for each accident.
2. Comprehensive General Liability Insurance including, but not limited to, Independent Consultant, Contractual Premises-Operation, and Personal Injury covering the liability assumed under indemnification provisions of this **Agreement**, with limits of liability for personal injury and/or bodily injury, including death of not less than \$500,000, each occurrence; and property damage of not less than \$100,000 each occurrence. (Combined Single Limits of not less than \$500,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, and the policy shall include Broad Form Property Damage coverage of not less than \$50,000 per occurrence, unless otherwise stated by exception herein.
3. Professional Liability Insurance (including Errors and Omissions) with minimum limits of \$1,000,000 per occurrence, if occurrence form is available; or claims made form with "tail coverage" extending three (3) years beyond completion and acceptance of the **Agreement** with



proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage," **Consultant** may submit annually to **Forward Pinellas** a current Certificate of Insurance proving that insurance remains in force throughout the same three (3) year period.

4. Comprehensive Automobile and Truck liability covering owned, hired, and non-owned vehicles with minimum limits of \$500,000 each occurrence for bodily injury including death and property damage of not less than \$100,000 each occurrence. (Combined Single Limits of not less than \$500,000 each occurrence will be acceptable unless otherwise stated.) Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards.

Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to the **Forward Pinellas** Executive Director by certified mail. The **Consultant** shall also notify the **Forward Pinellas** Executive Director, in a like manner, within twenty-four (24) hours after receipt of any notices of expiration, cancellation, non-renewal, or material change in coverage received by said **Consultant** from its insurer; and nothing contained herein shall absolve **Consultant** of this requirement to provide notice.

Companies issuing the insurance policy, or policies, shall have no recourse against **Forward Pinellas** for payment of premiums or assessments for any deductibles, which are at the sole responsibility and risk of **Consultant**.

The term **Forward Pinellas** shall include the MPO, all its members, its officers, and staff while acting on behalf of the MPO.

**Forward Pinellas** shall be endorsed to the required policy, or policies, as an additional insured, exclusive of Professional Liability Insurance.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by **Forward Pinellas**, to any such future coverage, or to **Forward Pinellas's** Self-Insured Retentions of whatever nature.

The **Consultant** hereby waives subrogation rights for loss or damage against **Forward Pinellas**.

The **Consultant** does hereby agree to indemnify, save and hold harmless **Forward Pinellas** 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, 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 **Forward Pinellas**. Nothing herein shall purport to waive **Forward Pinellas's** sovereign immunity as provided in §768.28, Florida Statutes.

#### **SECTION 11. 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. Recycled Products
7. Lobbying
8. No Government Obligation to Third Parties
9. Program Fraud and False or Fraudulent Statements and Related Acts
10. Government-Wide Debarment and Suspension
11. Incorporation of Federal Transit Administration (FTA) Terms
12. Access to Records
13. Federal Changes
14. Termination

**1. Fly America Requirements** - The **Consultant** 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 **Forward Pinellas** deems appropriate."*

The **Consultant** agrees to comply with applicable federal and state implementing regulations and other implementing requirements the Federal Highway Administration, Federal Transit Administration, or Florida Department of Transportation may issue. In addition to the above assurance, the Consultant 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 D "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 **Agreement**. 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 the federal or state governments 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 the federal or state governments 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 the federal or state governments 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.

**(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* and Forward Pinellas’s Disadvantaged Business Enterprise goal(s). The DBE goal(s) reflect the availability of willing and able DBEs who are registered with the State of Florida that would be expected to participate in **Forward Pinellas** and its **Consultant** 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 **Forward Pinellas** deems appropriate.

The **Consultant** is required to pay its subcontractors 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 **Forward Pinellas**. In addition, the **Consultant** may not hold retainage from its consultant(s).

The **Consultant** must promptly notify **Forward Pinellas**, 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 **Forward Pinellas**.

Information on **Forward Pinellas** DBE Program requirements is available at the **Forward Pinellas** offices and online. Information on the State of Florida DBE Program, including an application and available DBE bidders list may be found at online.

**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 MPO and understands and agrees that **Forward Pinellas** 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. 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.

**7. 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 E Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The **Consultant** 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 E (Certification Regarding Lobbying).

**8. No Obligation by the Federal Government to Third Parties** – **Forward Pinellas** and the **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 **Forward Pinellas**, the **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.

**9. 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 **Agreement**. 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 **Agreement** 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.

**10. 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 **Forward Pinellas**. If it is later determined that the **Consultant** knowingly rendered an erroneous certification, in addition to remedies available to **Forward Pinellas**, 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.

**11. 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 **Forward Pinellas** requests which would cause **Forward Pinellas** to be in violation of the FTA terms and conditions.

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

**13. 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**.

**14. Termination** – All services are to be performed by the **Consultant** to the satisfaction of the **Forward Pinellas** Executive Director based on the requirements of Exhibit A. The **Forward Pinellas** 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) - Forward Pinellas** 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 **Forward Pinellas** 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 **Forward Pinellas**, 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**, **Forward Pinellas** 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 **Forward Pinellas** that acts beyond the **Consultant’s** control led to the breach or default, including but not limited to a strike, fire, or flood, **Forward Pinellas**, 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) - Forward Pinellas** 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 **Forward Pinellas** 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 **Forward Pinellas** setting forth the nature of said breach or default, **Forward Pinellas** 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 **Forward Pinellas** 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 **Forward Pinellas** elects to waive its remedies for any breach by **Consultant** of any covenant, term or condition of this **Agreement**, such waiver by **Forward Pinellas** shall not limit **Forward Pinellas's** remedies for any succeeding breach of that or of any other term, covenant, or condition of this **Agreement**.

## **SECTION 12. BREACHES AND DISPUTE RESOLUTION.**

All services are to be performed by the CITY to the satisfaction of Forward Pinellas' Executive Director based on the requirements of Exhibit A. Forward Pinellas' 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 CITY mails or otherwise furnishes a written appeal to the Forward Pinellas Executive Director.

**a. Appeals** - After properly submitting an appeal in accordance with the provisions herein, the CITY 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 Forward Pinellas Executive Director shall be binding upon the CITY and the CITY shall abide by the decision.

**b. Performance During Dispute** - Unless otherwise directed by Forward Pinellas, the CITY 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 its employees, agents or others for whose acts it 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 or damage.

**d. 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 Forward Pinellas or CITY 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.

## **SECTION 13. PROHIBITION AGAINST CONTINGENT FEE.**

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 14. TRUTH IN NEGOTIATIONS.**

In connection with this agreement, the **Consultant** is required to complete Exhibit C "Truth in Negotiations" certificate.



**SECTION 15. SUCCESSORS AND ASSIGNS.**

The **Consultant** shall not assign or transfer its interest in this **Agreement** without the written consent of **Forward Pinellas**.

**SECTION 16. 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 **Forward Pinellas**. If it is later determined that the **Consultant** knowingly rendered an erroneous certification, in addition to remedies available to **Forward Pinellas**, 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 17. INDEPENDENT CONSULTANT**

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 **Forward Pinellas**.

**SECTION 18. NOTICE AND CONTACTS.**

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:

**Forward Pinellas:**  
Whit Blanton, MPO Executive Director  
310 Court Street, 2<sup>nd</sup> Floor  
Clearwater, FL 33756

**Consultant:**

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

## **SECTION 19. CONFLICT OF INTEREST.**

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 **Agreement** for which furnishing its services is required hereunder.

The **Consultant** further covenants and agrees that, when a former **Forward Pinellas** 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**.

If, in the sole discretion of the **Forward Pinellas** Executive Director or designee, a conflict of interest is deemed to exist or arise during the term of the **Agreement**, the **Forward Pinellas** Executive Director or designee may cancel this **Agreement**, effective upon the date so stated in the Written Notice of Cancellation, without penalty to **Forward Pinellas**.

## **SECTION 20. EFFECTIVE DATE, EXTENT AND TERM OF AGREEMENT.**

This **Agreement** will become effective upon proper and final execution, as reflected by the date first written above (Effective Date), and terminate upon the completion of the Scope of Services or (DATE), whichever date is sooner. The last invoice must be submitted by (DATE).

## **SECTION 21. PUBLIC ENTITY CRIMES.**

The **Consultant** is directed to the Florida Public Entity Crimes Act, Section 287.133, Florida Statutes, specifically Section 2(a), and the **Forward Pinellas** 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 22. DOCUMENTS COMPRISING AGREEMENTS.**

This **Agreement** represents, together with all Exhibits, the entire written **Agreement** between **Forward Pinellas** and the **Consultant** and may be amended only by written instrument signed by both **Forward Pinellas** and the **Consultant**.

## **SECTION 23. FINAL CLOSEOUT.**

**Forward Pinellas** may perform or have performed a final audit of the records of the **Consultant** to support the compensation paid the **Consultant** for the **Agreement**. 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.

**SECTION 24. 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.

FORWARD PINELLAS

Attest:

By: \_\_\_\_\_  
Whit Blanton, FAICP  
Forward Pinellas Executive Director

By: \_\_\_\_\_  
Councilwoman Doreen Caudell  
Forward Pinellas Chairman

Approved as to form:

By: \_\_\_\_\_  
Chelsea Hardy  
Assistant County Attorney

CONSULTANT

Attest:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A (SCOPE OF SERVICES)**

**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 \_\_\_\_\_

By \_\_\_\_\_  
(print this individual's name and title)

for \_\_\_\_\_  
(print name of entity submitting statements)

whose business address is \_\_\_\_\_

and if applicable whose Federal Employer Identification Number (FEIN) is \_\_\_\_\_

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

\_\_\_\_\_

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).

\_\_\_ 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.

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(Signature)

Print Name:

Title:

Agency:

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by

\_\_\_\_\_ who is

Personally known to me \_\_\_\_\_

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

\_\_\_\_\_  
(Signature) Notary Public—State of Florida

\_\_\_\_\_  
(Printed, typed or stamped commissioned name of notary public)

My commission expires \_\_\_\_\_ (SEAL)



**EXHIBIT C**

**TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with this **Agreement** dated \_\_\_\_\_, between **Forward Pinellas** 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 A of this Agreement.  
Standard compensation rate for this type engagement is as negotiated.

\_\_\_\_\_  
**Consultant**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT D**

**TITLE VI/ NONDISCRIMINATION POLICY STATEMENT**

The \_\_\_\_\_ (Name of Consultant) assures the Florida Department of Transportation and Forward Pinellas 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 \_\_\_\_\_ (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 \_\_\_\_\_ By \_\_\_\_\_

Print Name: \_\_\_\_\_ Title \_\_\_\_\_

## TITLE VI APPENDIX A of EXHIBIT D

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 E**

**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, \_\_\_\_\_ (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) Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_