MASTER CONSULTING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the Effective Date (defined in Section 1.1 below) by and between Polk Transportation Planning Organization ("TPO"), created by the State of Florida in accordance with Title 23 United States Code, Section 134 and Chapter 339.175, Florida Statutes, by and through its Board, situated at 330 W. Church Street, Bartow, Florida 33830, (hereinafter referred to as the "TPO"), and Kittelson & Associates, Inc., an Oregon corporation, located at 225 E. Robinson Street, Suite 355, Orlando, Florida 32801 (hereinafter referred to as the "Consultant"), and whose Federal Employer Identification Number is: 93-0964447.

WHEREAS, the Polk TPO was created by Interlocal Agreement dated February 17, 2015, between the Florida Department of Transportation (FDOT), Polk County, a political subdivision of the State of Florida, hereinafter referred to as Polk County, and fifteen municipalities located in Polk County for the purposes of providing professional planning services to support the needs of the TPO; and

WHEREAS, the TPO and Polk County entered into a TPO Staff Services Agreement on February 17, 2015, whereby Polk County agreed to provide staffing and professional services necessary to carry out the planning obligations of the TPO; and

WHEREAS, the TPO Staff Services Agreement provides that contracts and bids for the purchase of materials and services required by the TPO shall be in accordance with Polk County procedures; and

WHEREAS, the TPO requires certain professional services in connection with transportation planning in Polk County; and

WHEREAS, the TPO has solicited for these services pursuant to the TPO's adopted Unified Planning Work Program, in RFP #25-687, included by reference as to the scope of services contained herein in accordance with Polk County procurement procedures; and

WHEREAS, Consultant represents it is capable and prepared to provide such Services.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, the parties hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Chairman of the Board of the TPO (the "Effective Date").

1.2 The term of this Agreement shall be for a period of five (5) years from the Effective Date, unless otherwise sooner terminated as provided herein.

1.3 Services for the TPO under this Agreement for which Federal PL Funds are to be expended shall be limited to a period not to exceed five (5) years and may not be further extended.

2.0 **Services to Be Performed by Consultant**

2.1 The TPO does hereby retain the Consultant to furnish those services and to perform those tasks (collectively, the "Services") as further described in (i) the County's Request for Proposals RFP #25-687, to include all attachments and addenda, (ii) the Consultant's responsive proposal, and (iii) Florida Department of Transportation (FDOT) General Provisions thereto (collectively, (i) (ii), and (iii) are "RFP 25-687"), all of which are incorporated into this Agreement by this reference. A complete copy of RFP 25-687 and the Consultant's responsive proposal is attached as a composite Exhibit "A" and made a part of this Agreement and as may be further specifically designated and authorized by the TPO, in writing (collectively, the "Services"). Such authorization will be referred to as a Consultant Services Authorization ("CSA") or a Contract Purchase Order ("CPO") and all provisions of this Agreement apply to the CSA/CPO with full force and effect as if appearing in full within each CSA/CPO. Each CSA/CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages and completion date, and shall become effective upon the due execution. In the event of any conflict in terms between the above referenced documents and the terms herein, the terms included herein shall govern.

2.2 The Consultant is not authorized to undertake any project without a duly executed CSA/CPO, which shall specify the work to be performed and the time to be completed. Consultant recognizes that the TPO may employ several different Consultants to perform the work described and that the Consultant has not been employed as the exclusive agent to perform any such services.

2.3 When the Consultant and the TPO enter into a CSA/CPO where the term of the

CSA/CPO expires on a date that is later than the date that the this Agreement expires, the Consultant and the TPO agree that the terms of this Agreement and any amendments, attachments or provisions hereof are automatically extended until the expiration (including any extension or amendment thereto) or full completion of the requirements of the CSA/CPO have been performed. Cancellation by the TPO of any remaining work prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

3.0 **Compensation**

3.1 General

3.1.1 TPO shall pay Consultant in accordance with Exhibit "B", "Fee Schedule", which is attached hereto and incorporated by reference as part of this Agreement. The fee schedule identifies all job classifications, which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

3.1.2 Upon the mutual agreement of the parties, the Fee Schedule, as set out in Exhibit "B" may be adjusted by a written Amendment to this Agreement annually beginning one year from the Effective Date of this Agreement. Such amendment must be executed by both parties and shall operate prospectively only and shall not alter fee schedules for CSA's/CPO's in effect at the time of the amendment.

3.1.3 Compensation may be negotiated as a not to exceed price or a lump sum amount on a per-project basis, on each individual CSA/CPO.

3.1.4 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as Exhibit "B". The Hourly Rate Schedule identifies all job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

3.1.5 Invoices must reference the applicable CSA/CPO number, using an invoice form approved by the TPO Auditor.

3.1.6 Each individual invoice shall be due and payable forty-five (45) days after receipt by the TPO of correct, fully documented, invoice, in form and substance satisfactory to the TPO with all appropriate cost substantiations attached. All invoices shall be delivered, as applicable based on the particular project:

Polk TPO
P.O. Box 9005
Bartow, FL 33831
Attention: Director

3.1.7 In order for both parties herein to close their books and records, the Consultant will clearly state "Final Invoice" on the Consultant's final/last billing to the TPO. This certifies that all services have been properly performed and all charges and costs have been invoiced to the TPO. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the Consultant.

3.1.8 Payment of the final invoice shall not constitute evidence of the TPO's acceptance of the work

3.1.9 Invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Additional documents may be requested by TPO and, if so requested, shall be furnished by Consultant to TPO and County's Auditor's satisfaction.

3.1.10 By its submission of an invoice, the Consultant's project manager or designated payroll officer shall be deemed to be attesting to the correctness and accuracy of time charges and requested reimbursements.

3.1.11 Pursuant to Section 3.1.4, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the TPO and, if so requested, shall be furnished by the Consultant to the TPO Auditor's satisfaction.

3.2 Reimbursable

3.2.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall be reimbursed per the TPO/County Reimbursable Schedule, Exhibit "C", and include copies of paid receipts, invoices or other documentation acceptable to the TPO/County's Auditor. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement, CSA, or CPO.

3.2.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable CSA or CPO, and include:

Sub-Consultant
Pre-approved Equipment

3.2.3 Mileage and associated travel costs shall be reimbursed in accordance with F.S. 112.061 and FDOT policy for pre-approved out-of-county travel (excluding travel from home offices located outside of Polk County to the Polk County line).

3.2.4 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the TPO upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the TPO offices upon demand, termination of the Agreement, or the conclusion of the project, whichever occurs first.

3.2.5 Consultant shall maintain a current inventory of all such assets.

4.0 **Insurance**

4.1 General Provisions

4.1.1 Consultant shall maintain, at all times, the following levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverages and amounts of coverage set forth below and provide the TPO and County with a Certificate of Insurance and an opportunity to inspect a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the TPO and County to evidence such coverage before any work commences.

4.1.2 The Transportation Planning Organization, the County, and the Florida

Department of Transportation shall be included as an additional insured on all Consultant policies related to the project, excluding professional liability and workers compensation. The Commercial General Liability and Worker's Compensation policies shall contain a waiver of subrogation in favor of the Transportation Planning Organization, the County, and the Florida Department of Transportation. All insurance coverage shall be written with an insurer having an A.M. Best Rating of at least the "A-" category and size category of VIII.

4.1.3 The Consultant's self-insured retention or deductible per line of coverage shall be the sole responsibility of the Consultant.

4.1.4 If there is any failure by the Consultant to comply with the provisions of this section, the TPO and County may, at its option, on notice to the Consultant, suspend the work for cause until there is full compliance.

4.1.5 TPO and County may, at its sole discretion, purchase such insurance at Consultant's expense provided that the TPO and County shall have no obligation to do so and if the TPO and County shall do so, it shall not relieve Consultant of its obligation to obtain insurance.

4.1.6 The Consultant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

4.1.7 All Consultants' subconsultants shall be required to include TPO, County and Consultant as additional insured on their General Liability Insurance policies.

4.1.8 Consultant shall require its subconsultants to meet the required insurance limits as set forth and required in this Agreement.

4.1.9 The Consultant shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the TPO and County.

4.2 Comprehensive Automobile Liability Insurance. $1,000,000.00 per occurrence / aggregate for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

4.3 Commercial General Liability. $1,000,000.00 per occurrence / aggregate for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

4.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

4.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

4.4 Professional Liability Insurance. \$2,000,000.00 per claim and in the aggregate for liabilities arising from negligent design errors and omissions, inclusive of defense costs. Consultant shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the TPO Director and/or County Director of Risk Management and Insurance.

4.5 Performance, Payment and Other Bonds. Consultant shall furnish Performance and Payment Bonds specific to each project if required and agreed to under the CSA or CPO for the project.

4.6 Worker's Compensation. The Consultant shall provide, pay for, and maintain worker's compensation insurance on all employees as required by Florida Statutes.

5.0 **Standard of Care**

5.1 Consultant has represented to the TPO and County that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

5.2 Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

5.3 Consultant shall, at no additional cost to TPO and County, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this

Agreement.

5.4 The Consultant warrants that all services shall be performed by skilled and competent personnel to the professional standards in the field.

6.0 **Indemnification**

6.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the TPO, County and Consultant agree to allocate such liabilities in accordance with this Section.

6.2 Indemnification.

6.2.1 Consultant shall indemnify and hold harmless the TPO, County, and FDOT, and each of their respective officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

6.2.2 The TPO review, comment and observation of the Consultant's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

6.2.3 Consultant agrees that it bears sole legal responsibility for its work and work product, and the work and work product of subconsultants and their employees, and/or for Consultant's performance of this Agreement and its work product(s).

6.2.4 IN ACCORDANCE WITH SECTION 558 ET SEQ OF THE FLORIDA STATUTES AND TO THE FULLEST EXTENT PERMITTED BY LAW, COUNTY ACKNOWLEDGES AND AGREES THAT NO INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT SHALL BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURING WITHIN THE SCOPE AND COURSE OF THIS AGREEMENT, TO THE EXTENT ALL PROVISIONS OF SAID STATUTORY PROVISION ARE SATISFIED.

6.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Agreement shall survive as if the Agreement were in full force and effect.

7.0 **Independent Contractor**

7.1 Consultant undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 The TPO shall have no right to supervise the methods used, but the TPO shall have the right to observe such performance.

7.3 Consultant shall work closely with the TPO in performing Services under this Agreement.

7.4 The Consultant shall not pledge the TPO's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the TPO in any manner.

7.5 Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

8.0 **Authority to Practice**

8.1 The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

9.0 **Compliance with Laws**

9.1 The TPO, the Consultant and/or Contractor and Subcontractor will comply with all applicable Federal and State guidelines set forth in the TPO's Transportation Planning Funds Joint Participation Agreement executed on April 14, 2016, and any amendments thereto.

9.2 Consultant acknowledges and agrees that, in regards to TPO projects, funding for multi-year projects is subject to the annual approval of the TPO's Unified Planning Work Program by the Florida Department of Transportation and Federal Highway Administration.

9.3 Compliance with Title VI of the Civil Rights Act of 1964 and Related Statutes. During the performance of this contract for TPO projects, the TPO, for itself, its assignees and successors in interest, and the Consultant and/or Contractor and Subcontractor agree as follows:

9.3.1 Compliance with Regulations. The Consultant and/or Contractor and Subcontractor shall comply with the regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, which are herein incorporated by reference and made part of this contract.

9.3.2 Nondiscrimination. The Consultant and/or Contractor and Subcontractor with regards to the work performed by it during the contract will not discriminate on the grounds of race, color, disability, religion, sex, national origin, or familial status in the selection and retention of contractors and subcontractors, including procurement of material and leases of equipment. The TPO and the Consultant and/or Contractor and Subcontractor will not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the contract covers a program set forth in 49 CFR part 21, Appendix B.

9.3.3 Solicitations for subcontractors, including procurement of materials and equipment. The Consultant and/or Contractor and Subcontractor acknowledges and agrees that in all solicitations made by competitive bidding or negotiation by the TPO for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the TPO of the TPO's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, disability, religion, sex, national origin, or familial status.

9.3.4 Information and Reports. Consultant acknowledges and agrees that the TPO 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 (FDOT), the Federal Highway Administration (FHWA), or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of the TPO is in the exclusive possession of another who fails or refuses to furnish this information, the TPO shall so certify to the FDOT, the FHWA, and the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

9.3.5 Sanctions for Non-Compliance. Consultant acknowledges and agrees that in the event of the TPO's non-compliance with the non-discrimination provisions of this contract, the FDOT shall impose such contract sanctions as it, the FHWA, or the FTA determine to be appropriate, including, but not limited to: withholding of payments to the TPO under the agreement until the TPO complies, and/or cancellation, termination, or suspension of the agreement, in whole or part.

9.4 Participation by Disadvantaged Business Enterprise (DBE). During the Performance of this contract for TPO projects, the TPO and the Consultant and/or Contractor and Subcontractor shall abide by the statements in 9.4.1 and 9.4.2.

9.4.1 As required by 49 CFR 26.13, the TPO and the Consultant and/or Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, religion, gender, age, disability in the award and performance of any Department of Transportation (DOT) assisted contract or in the administration of its DBE program or the requirements of 40 CFR Part 26. The TPO shall take all necessary and reasonable steps under 40 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The TPO's DBE program, as required by CFR Part 26 and as approved by the U.S. Department of Transportation, is incorporated by reference in the Planning Funds agreement between the TPO and the FDOT and the Consultant and/or Contractor and Subcontractor shall adhere to that program.

9.4.2 Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the agreement. Upon notification to the TPO of its failure to carry out its approved program, the U.S. Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

9.4.3 No member, officer, or employee of the TPO either during his or her tenure or for one (1) year thereafter shall have any interests, direct or indirect, in this contract or the proceeds thereof.

10.0 **Public Records Law**

(a) The Consultant acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Consultant further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Consultant shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Contractor acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(1) keep and maintain public records required by the County to perform the services required under this Agreement;

(2) upon request from the County's Custodian of Public Records or his/her designee, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Consultant does not transfer the records to the County; and

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

(c) **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

RECORDS MANAGEMENT LIASON OFFICER
POLK COUNTY
330 WEST CHURCH ST.
BARTOW, FL 33830
TELEPHONE: (863) 534-7670
EMAIL: RMLO@POLKFL.GOV

11.0 **Compliance with Laws**

11.1 In performance of the Services, Consultant shall comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards, including those now in effect and hereafter adopted.

12.0 **Subcontracting**

12.1 The TPO reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

12.2 Subcontractors that are not pre-qualified by FDOT are subject to compensation restrictions as specified in Rule 14-75, F.A.C. Any such subcontractor utilized must be technically qualified by FDOT prior to any work being performed.

12.3 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the Consultant shall promptly do so, subject to acceptance of the new subcontractor by the TPO. Failure of a Subcontactor to timely or properly perform its obligations shall not relieve Consultant of its obligations hereunder.

13.0 **Federal and State Taxes**

13.1 The TPO is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the TPO will provide an exemption certificate to Consultant. The Consultant shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the TPO, nor shall the Consultant be authorized to use the TPO's Tax Exemption Number in securing such materials.

14.0 **Public Entity Crimes**

14.1 The Consultant understands and acknowledges that this Agreement with the TPO will be voidable by the TPO, in the event the conditions under Section 287.133, Florida Statutes applies to the Consultant, relating to conviction for a public entity crime.

15.0 **TPO's Responsibilities**

15.1 TPO shall be responsible for providing access to all TPO project sites, and providing information in the TPO's possession that may reasonably be required by Consultant, including; existing reports, studies, financial information, and other required data that are available in the files of the TPO.

16.0 **Termination of Agreement**

16.1 This Agreement may be terminated by the Consultant upon thirty (30) days prior written notice to the TPO in the event of substantial failure by the TPO to perform in accordance with the terms of the Agreement through no fault of the Consultant.

16.2 This Agreement may be terminated by the TPO with or without cause immediately upon written notice to the Consultant.

16.3 Unless the Consultant is in breach of this Agreement, the Consultant shall be paid for services rendered to the TPO's satisfaction through the date of termination.

16.4 After receipt of a Termination Notice, as described in this Article 16.0, and except as otherwise directed by the TPO, the Consultant shall:

16.4.1 Stop work on the date and to the extent specified.

16.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

16.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the TPO.

16.4.4 Continue and complete all parts of the work that have not been terminated.

16.4.5 If the Agreement is to be terminated for cause, the Consultant shall be provided a written Notice to Cure affording the Consultant ten (10) days to address any alleged deficiencies specified in the Notice prior to commencing with the termination process. The Consultant shall not be held liable for the accuracy or reliability of any partially completed work delivered in accordance with early termination.

17.0 **<u>Uncontrollable Forces (Force Majeure)</u>**

17.1 Either party hereunder may be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" is defined as any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall be excused from performance if non-performance is due to forces which are reasonably preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied prior to, during, or immediately after their occurrence. Within five (5) days after the occurrence of an Event of Force Majeure, the non-performing party shall deliver written notice to the other party describing the event in reasonably sufficient detail, along with proof of how the event has precluded the non-performing party from performing its obligations hereunder, and a good faith estimate as to the anticipated duration of the delay and the means and methods for correcting the delay. The non-performing party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the non-performing party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the non-performing party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period, the non-performing party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

18.0 **Governing Law and Venue**

18.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Polk County, Florida or the United States District Court, Middle District of Florida located in Hillsborough County, Florida. Each party shall be responsible for its own attorneys' fee and other legal costs and expenses.

19.0 **Non-Discrimination**

19.1 The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

20.0 **Waiver**

20.1 A waiver by either TPO and/or County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

21.0 **Severability**

21.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

21.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

21.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

21.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

22.0 **Entirety of Agreement**

22.1 The TPO, County and the Consultant agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein.

22.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the TPO, County and Consultant pertaining to the Services, whether written or oral.

22.3 None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

23.0 **Modification**

23.1 This Agreement may not be modified unless such modifications are evidenced in writing signed by both TPO and Consultant. Such modifications shall be in the form of a written

Amendment executed by both parties.

23.2 In accordance with Resolution 2013-07, the TPO Executive Director is authorized to approve time extensions to CSA's and CPO's for a time period not to exceed sixty (60) days. Any time extension exceeding sixty (60) days will require the approval of the TPO. Such modifications are evidenced in writing signed by both TPO Executive Director and Consultant

24.0 **Successors and Assigns**

24.1 TPO, County and Consultant each binds itself and its partners, successors, permitted assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, permitted assigns, and legal representatives of such other party.

24.2 Consultant shall not assign this Agreement without the express written approval of the TPO by executed amendment, which approval may be withheld in the TPO's sole discretion.

24.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this agreement and such substitution shall be affirmed by the TPO Board by executed amendment.

25.0 **Contingent Fees**

25.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than 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.

26.0 **Truth-In-Negotiation Certificate**

26.1 Execution of this Agreement by the Consultant shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the Effective Date of this Agreement.

26.2 The said rates and costs shall be adjusted to exclude any significant sums should the TPO determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The TPO Board shall exercise its rights under this "Certificate" within one (1) year following payment.

27.0 **Ownership of Documents**

27.1 Consultant shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the TPO Board, County and FDOT for its use and/or distribution as may be deemed appropriate by the TPO Board, County and FDOT. Consultant is not liable for any damages, injury or costs associated with the TPO Board, County and FDOT use or distribution of these documents for purposes other than those originally intended by Consultant. Notwithstanding the foregoing, Consultant retains ownership of any pre-existing intellectual property, proprietary tools, and methodologies that were derived independently of this Agreement. To the extent such intellectual property is incorporated into the work product, Consultant grants TPO Board, County and FDOT a non-exclusive, royalty-free license to use, reproduce, modify, maintain, and distribute such materials as is reasonably necessary for governmental purposes, including the purposes contemplated under this Agreement. This provision does not limit in any way the public records obligations of public entities under the law.

28.0 **Access and Audits**

28.1 Consultant shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The TPO Board, FTA Administrator, the Comptroller General of the United States or any of their authorized representatives shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the Consultant's place of business.

28.2 Misrepresentations of billable time or reimbursable expenses as determined by the County Comptroller to the TPO Board/County shall result in the recovery of any resulting overpayments. The TPO Board and/or County's cost of recovery shall be the sole expense of the Consultant, including accounting and legal fees, court costs and administrative expenses.

28.3 Intentional misrepresentations of billable hours and reimbursable expenses will be criminally prosecuted to the fullest extent of the law.

28.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

29.0 **Notice**

29.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to County:	Polk TPO P.O. Box 9005 Drawer TS05 Bartow, FL 33830 Attention: Director
As to Consultant:	Kittelson & Associates, Inc. E. Robinson Street, Suite 355 Orlando, Florida 32801 Attention: Nathan Kautz, PE

29.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

29.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and TPO and County.

30.0 **Service of Process**

As to County:	TPO Attorney County Administration Building 330 W. Church Street, 4th Floor Bartow, Florida 33830
As to Consultant:	Kittelson & Associates, Inc. E. Robinson Street, Suite 355 Orlando, Florida 32801 Attention: Nathan Kautz, PE

31.0 **Contract Administration**

31.1 Services of Consultant shall be under the general direction of the TPO Director or their successor, who shall act as the TPO's representative during the term of this Agreement.

32.0 **Key Personnel**

32.1 Consultant shall notify TPO in the event of key personnel changes, which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to changes. Consultant at TPO's request shall remove without consequence to the TPO any Subcontractor or employee of the Consultant and replace him/her with another employee having the required skill and experience. TPO has the right to reject proposed changes in key personnel. The following personnel shall be considered key personnel:

Name: Nathan Kautz, PE

33.0. **Annual Appropriations**

33.1 Consultant acknowledges that the TPO, 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. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the TPO's performance and obligation to pay under this agreement is contingent upon annual appropriation.

34.0 **Intentionally omitted**

35.0 **No Government Obligation to Third Parties**

35.1 The TPO and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the TPO, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

35.2 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.

36.0 **Federal Changes**

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 Master Agreement between TPO and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant1s failure to so comply shall constitute a material breach of this contract.

37.0 **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 contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.lE, 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 TPO/County requests which would cause TPO/County to be in violation of the FTA terms and conditions.

38.0 **Dispute Resolution**

If the Consultant materially defaults in its obligations under this Agreement, CSA's or CPO's and fails to cure the same within fifteen (15) days after the date the Consultant receives written notice of the default from the County, then the County shall have the right to (i) immediately terminate this Agreement by delivering written notice to the Consultant, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the County materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the County receives written notice of the default from the Consultant, then the Consultant shall have the right to immediately terminate this Agreement by delivering written notice to the County. Upon any such termination, the County shall pay the Consultant the full amount due and owing for all Services performed through the date of Agreement termination.

39.0 **Americans with Disabilities Act**

All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

40.0 **Attorneys' Fees and Costs**

Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

41.0 **Unauthorized Alien(s)**

The Consultant agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this Agreement. The TPO and County shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the TPO and County. The form “AFFIDAVIT CERTIFICATION IMMIGRATION LAWS” will be signed by the Consultant and submitted as part of the Agreement.

42.0 **Employee Eligibility Verification (E-VERIFY)**

A. For purposes of this section, the following terms shall have the meanings ascribed to them below, or as may otherwise be defined in Section 448.095, Florida Statutes, as amended from time to time:

(i) “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration; and

(ii) “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees; and

(iii) “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

B. Pursuant to Section 448.095(2)(a), Florida Statutes, effective January 1, 2021, public employers, contractors and subcontractors shall register with and use the E-Verify system in order to verify the work authorization status of all newly hired employees. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this contract, and the County may treat a failure to comply as a material breach of this contract.

C. By entering into this contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this contract, or if a subcontractor knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination. The Contractor shall be liable for any additional costs incurred by the County as a result of the termination of this contract. Nothing in this section shall be construed to allow intentional discrimination of any class protected by law.

43.0 **Limitation of Liability.**

IN NO EVENT, SHALL THE TPO OR THE COUNTY OR THE CONSULTANT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR

PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

44.0 **No Construction Against Drafter**

44.1 The Parties acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by the Parties. Accordingly, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

45.0 **Third-Party Beneficiary**

The County is a third-party beneficiary to this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

46.0 **Consultant Representations**

46.1 The Consultant hereby represents and warrants the following to the County:

46.1.1 Consultant is a corporation that is duly organized and existing in good standing under the laws of the State of Oregon with full right and authority to do business within the State of Florida.

46.1.2 Consultant's performance under this Agreement will not violate or breach any contract or agreement to which the Consultant is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation.

46.1.3 Consultant has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms.

46.1.4 Consultant now has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

46.1.5 Consultant has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

46.1.6 Consultant has the personnel and experience necessary to perform all Services in a professional and workmanlike manner.

46.1.7 Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances.

46.1.8 Consultant shall, at no additional cost to County, re-perform those Services which fail to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement.

46.1.9 Estimates, opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by the Consultant will represent its best judgment based on its experience and available information. The County recognizes that the Consultant has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, the Consultant does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by the Consultant.

46.1.10 Each individual executing this Agreement on behalf of the Consultant is authorized to do so.

(THE REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

Polk Transportation Planning Organization (TPO)

By:______________________________
Executive Director, Polk TPO

By:______________________________
Chairman, TPO

Date Signed by TPO Board:______________

Review as to form and legal sufficiency

7/15/2024
County Attorney's Office Date

ATTEST:

By:______________________________
Corporate Secretary

Marc Butorac
[Print Name]

DATE: 8/17/26

SEAL

KITTELSON & ASSOCIATES, INC.
CORPORATE SEAL
01/04/1988
OREGON

Kittelson & Associates, Inc.
an Oregon corporation

By:______________________________

Anthony Yi
[Print Name]

Senior Principal, VP
[Title]

DATE: 8/17/26

ACKNOWLEDGEMENT OF FIRM, IF A CORPORATION

STATE OF Oregon County OF Multnomah

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this Aug 17, 2026 (Date) by Anthony Yi (Name of officer or agent) as Senior Principal/Vice President (title of officer or agent) of the Corporation on behalf of the Corporation, pursuant to the powers conferred upon him/her by the Corporation. He/she personally appeared before me at the time of notarization, and ☒ is personally known to me or ☐ has produced ______________ as identification and did certify to have knowledge of the matters stated in the foregoing instrument and certified the same to be true in all respects. Subscribed and sworn to (or affirmed) before me this Aug 17, 2026 (Date).

Jo Arbor Fernbrook (Official Notary Signature and Notary Seal)

JO ARBOR FERNBROOK (Name of Notary typed, printed or stamped)

Commission Number 1031194A Commission Expiration Date Dec. 18, 2026

OFFICIAL STAMP
JO ARBOR FERNBROOK
NOTARY PUBLIC - OREGON
COMMISSION NO. 1031194A
MY COMMISSION EXPIRES DEC. 18, 2026