



NOVEMBER 21, 2017

AGENDA ITEM 3 D

**SOUTHWEST AREA TRANSPORTATION PLAN
BLUEPRINT INTERGOVERNMENTAL AGENCY MEMORANDUM OF UNDERSTANDING**

TYPE OF ITEM: Consent

STATEMENT OF ISSUE

This item seeks approval of a Memorandum of Understanding (MOU) between the Blueprint Intergovernmental Agency (IA) and the CRTPA related to development of the Southwest Area Transportation Plan (SWATP).

RECOMMENDED ACTION

Option 1: Approve a Memorandum of Understanding between the Blueprint Intergovernmental Agency and the CRTPA related to development of the Southwest Area Transportation Plan

HISTORY AND ANALYSIS

The Southwest Area Transportation Plan (SATP) will be investigating opportunities for multimodal improvements in the Orange Avenue (Capital Circle, Southwest to Monroe Street), Springhill Road (Capital Circle, Southwest to Orange Avenue) and Lake Bradford Road (Capital Circle, Southwest to Stadium Drive) corridors.

Ultimately, the results of the project will produce individual master plans for each of the corridors that will provide guidance for future Project Development and Environment (P&DE) studies and/or the implementation of improvements should a PD&E not be required.

The project is being jointly managed by the CRTPA and the Blueprint IA. A Memorandum of Understanding, provided as **Attachment 1**, has been developed outlining the responsibilities of each agency during the project's development.

OPTIONS

Option 1: Approve the Memorandum of Understanding between the Blueprint Intergovernmental Agency and the CRTPA related to development of the Southwest Area Transportation Plan
(RECOMMENDED)

Option 2: Provide other direction.

ATTACHMENTS

Attachment 1: Memorandum of Understanding

**COST SHARING AGREEMENT BETWEEN
BLUEPRINT INTERGOVERNMENTAL AGENCY AND CRTPA FOR
COMPLETION OF THE SOUTHWEST AREA TRANSPORTATION PLAN
(CONTRACT No. _____)**

THIS AGREEMENT is made and entered into this ____ day of November 2017, by and between THE LEON COUNTY-CITY OF TALLAHASSEE BLUEPRINT INTERGOVERNMENTAL AGENCY, (hereinafter called BLUEPRINT), and CAPITAL AREA REGIONAL TRANSPORTATION PLANNING AGENCY, (hereinafter called CRTPA).

RECITALS

WHEREAS, In February 2016 a new project called “Orange Avenue Corridor Study” was proposed to be added to the Capital Improvements Budget for BLUEPRINT with an allocation of \$350,000 over two years; this budget proposed to allocate \$175,000 in FY 2017 and \$175,000 in FY 2018; and

WHEREAS, The Orange Avenue Corridor Study was a precursor to the FDOT Orange Avenue Project Development and Environment (PD&E) Study, which is identified in the FDOT Fiscal Year 2017 Work Plan for state funding in 2019; and

WHEREAS, In June 2016, the CRTPA modified the Unified Planning Work Program to allocate \$350,000 to the Orange Avenue Corridor Study; and

WHEREAS, the Orange Avenue Corridor Study was subsequently renamed the Southwest Area Transportation Plan (Project), which has been approved to be undertaken in partnership with the CRTPA and will be a precursor to the FDOT Orange Avenue Project Development and Environment (PD&E) Study, which is in FDOT Fiscal Year Work Plan for state funding in 2019.

NOW THEREFORE, in consideration of the mutual covenants, obligations, and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, BLUEPRINT and CRTPA agree as follows:

- 1) Incorporated By Reference.**

The parties agree that the above recitals are a material part of this agreement and are incorporated herein by reference.

2) **Services Provided**

- a. **C RTPA has previously entered into an agreement with Kimley-Horn as a consultant regarding providing certain service to CRTPA. CRTPA has determined that the Southwest Area Transportation Plan (Project) is appropriate for inclusion in the consultant services contract with Kimley-Horn.**
- b. **CRTPA shall cause to be performed and completed the Services toward completion of the Project as further described in its agreement with Kimley-Horn and Associates, attached hereto as Exhibit A, and incorporated herein as fully set forth below, with all practicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions herein and all applicable state and federal laws.**
- c. **CRTPA shall require Kimley-Horn and Associates to provide all criteria and information as to the requirements, objectives and expectations for the Project, including performance requirements, budgetary limitations, and copies of all design and construction standards which will be required to be used or included in the drawings and specifications, to the Agency.**

CRTPA shall allow Blueprint to examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Kimley-Horn and Associates, as the Agency deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Project.

- d. **The CRTPA Project Manager will determine the scope of services for Kimley-Horn and Associates and will give direction to Kimley-Horn and Associates in performance of its duties related to the Project. The CRTPA Project Manager shall inform the Blueprint Project Manager of the scope of services to be provided by Kimley-Horn.**

2) **Reimbursement**

CRTPA shall submit to BLUEPRINT, in a format acceptable to BLUEPRINT, an Invoice for Services rendered pursuant to CRTPA's Agreement with Kimley-Horn and Associates, as set forth in Exhibit A, with a description of the Services provided and certification that said Services have been successfully completed by Kimley-Horn and Associates and paid for by CRTPA. All Invoices will be submitted by CRTPA on a monthly basis. Notwithstanding anything to the contrary, BLUEPRINT shall in no respect be liable to CRTPA for or in an amount greater than three hundred fifty thousand dollars (\$350,000.00).

3) **Effective Date; Subject to Budget**

This Agreement shall be effective commencing November ____, 2017, and terminate on September 30, 2019. The continuation of this Cost Reimbursement Agreement after the expiration hereof is subject to appropriation of funding by CRTPA and BLUEPRINT in their respective annual fiscal year budgets.

4) **Subcontracts**

CRTPA has determined that it has an existing contract which CRTPA shall utilize with Kimley-Horn and Associates for the Services to be provided under this Agreement. BLUEPRINT shall not be obligated or liable hereunder to any party or person other than CRTPA.

5) **Indemnification**

To the extent allowed by the Laws of Florida and pursuant to Florida Statute 768.28, each party hereby agrees to indemnify, defend, save, and hold harmless the other party, its officials, officers, employees and agents from and against any and all claims, demands, liabilities, and suits of any nature arising out of, because of, or due to any negligent act or occurrence or omission or commission of that party, its, officials, officers, agents, or employees.

6) **Production of Documents**

CRTPA shall submit to BLUEPRINT, upon such request of BLUEPRINT, any data, reports, records, contracts or other documents prepared for or by CRTPA or Kimley-Horn and Associates in the accomplishment of the agreed upon Services.

7) **Termination**

Either Party may terminate this Agreement for cause by giving the other Party hereto not less than thirty (30) days prior written notice of its intent to terminate. BLUEPRINT shall not be required to give CRTPA such thirty (30) days written notice if, in the opinion of BLUEPRINT, the contractor retained by CRTPA, Kimley-Horn and Associates, is unable to perform its obligations under the contract for these services only as provided in Exhibit A, or if in the opinion of BLUEPRINT, the services being provided thereunder are not satisfactory. In such case, BLUEPRINT may immediately terminate this Agreement by providing a notice of termination to CRTPA. Termination of this Agreement for any reason under this Section will not affect (i) any liabilities or obligations of either Party arising before such termination or as a result of the events causing such termination, or (ii) any damages or other remedies to which a Party may be entitled to under this Agreement, at law or in equity, arising out of a breach of this Agreement.

8) **Audits, Records, and Records Retention**

CRTPA agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds reflected herein.
- b. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- c. Upon completion or termination of the Agreement and at the request of BLUEPRINT, CRTPA will cooperate with BLUEPRINT to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph b above. BLUEPRINT may reproduce any written materials generated as a result of the CRTPA'S contractor, Kimley-Horn and Associates providing Services as further described in Exhibit A.
- d. To assure that all records required to be maintained by the Kimley-Horn and Associates hereby shall be subject at all reasonable times to inspection, review, or audit by County, Federal, state, or other personnel duly authorized by BLUEPRINT.
- e. To permit persons duly authorized by BLUEPRINT and Federal auditors, if any, pursuant to 45 CFR, Part 92.36(I)(10), to have full access to and the right to examine any of CRTPA's records and documents related to this Agreement, regardless of the form in which kept, at all reasonable times for as long as those records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments, and its agreement with, Kimley-Horn and Associates, to provide the Services set forth in Exhibit A.
- g. Comply with public records access requirements set forth in Ch. 119, Florida Statutes, including the obligation to:
 1. Keep and maintain public records required by CRTPA to perform or have performed the Services required under this Agreement.
 2. Upon request from BLUEPRINT'S custodian of public records, provide BLUEPRINT 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 termination of the Agreement if CRTPA does not transfer the records to BLUEPRINT.**

9) **MISCELLANEOUS PROVISIONS**

a. **Assignments**

This Agreement shall not be assigned as a whole or in part without the prior written consent of BLUEPRINT nor shall CRTPA assign any monies due or to become due to him hereunder without the prior written consent of BLUEPRINT.

b. **Non-Waiver**

Failure by BLUEPRINT to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts but the same shall be and remain at all times, in full force and effect.

c. **Modifications**

This Agreement constitutes the entire understanding of the Parties. Any modifications to this Agreement must be in writing.

d. **Venue**

Venue for all actions arising out of this Agreement shall lie in Leon County, Florida.

e. **Construction**

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

f. **Compliance with Anti-Discrimination Legislation**

In providing, or contracting to provide Services, and otherwise performing obligations under this Agreement, CRTPA shall comply

with the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, and any other federal or state law that prohibits discrimination on the basis of race, color, national origin, religion, sex, age, marital status, disability, sexual orientation or gender identity.

g. Headings In This Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either Party, and do not alter any terms of this Agreement.

h. Severability

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, shall remain in full force and effect as if such invalid or unenforceable term had never been included.

i. Force Majeure

If either Party is prevented from or delayed from performing any obligations under this Agreement by circumstances beyond its control, including but not limited to fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, or federal government (“Force Majeure”), then the affected party shall be excused from performance hereunder during the period of disability. The party claiming Force Majeure shall promptly notify the other party in writing when upon learning of the existence of a Force Majeure condition, and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term “Force Majeure” does not include or excuse performance under this Agreement for events relating to increased costs associated with fuel, labor, labor disputes, insurance, or other expenses of performing the obligations hereunder.

j. Survival of Obligations

Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination.

k. Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

l. Sovereign Immunity

Nothing herein shall be construed as a waiver of any rights and privileges afforded the Parties, under section 768.28, Florida Statutes, as amended.

m. Dispute Resolution

- 1. All disputes arising under or relating to this Agreement shall be resolved in accordance with this Section.**
- 2. The Parties shall attempt to resolve all disputes that arise under this Agreement in good faith and in accordance with the following procedure:**
 - a. The aggrieved Party shall give written notice to the other Party setting forth the nature of the dispute, date of occurrence (if known), and proposed equitable resolution.**
 - b. Representatives of both Parties shall meet at the earliest opportunity to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, they shall report their decision to the Parties in writing.**
 - c. If those representatives are unable to reconcile the dispute, they shall report their impasse to the appropriate BLUEPRINT Director and the CRTPA'S designee, who, at their earliest opportunity, shall meet and attempt to reconcile the dispute.**
 - d. Should the Blueprint Director and the CRTPA'S designee fail to resolve the dispute, they shall report their impasse to PLACE Director, and the CRTPA Executive Director, who, at their earliest opportunity, shall review and attempt to resolve the dispute.**
 - e. If the PLACE Director and CRTPA Executive Director are not able to amicably resolve the dispute within**

fifteen (15) business days after the impasse is reported to them, then either Party may pursue whatever forms of relief that may be available to it under this Agreement, at law, or in equity.

n. Attorneys' Fees and Costs.

In the event of a dispute arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing Party is entitled shall include costs that are taxable under any applicable statute, rule or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

In witness whereof, BLUEPRINT and CRTPA have caused this Agreement to be executed by their authorized representatives on the day and year first written above.

LEON COUNTY–CITY OF TALLAHASSEE
BLUEPRINT INTERGOVERNMENTAL
AGENCY

CAPITAL REGION
TRANSPORTATION PLANNING
AGENCY

By: _____
Charles Hargraves, P.E.
Blueprint Director

By: _____
Curtis Richardson
Chairman

Date: _____

Approved as to Form:
Blueprint Intergovernmental Agency

By: _____
Patrick T. Kinni, Esq.

Attest:
City of Tallahassee Treasurer-Clerk

By: _____
James O. Cooke, IV