

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Amendment #1 to PS-2564-07/JVP- Miscellaneous Capacity and Safety Improvements with Kittelson & Associates, Inc., of Orlando, Florida

DEPARTMENT: Administrative Services

DIVISION: Purchasing and Contracts

AUTHORIZED BY: Frank Raymond

CONTACT: Bob Hunter

EXT: 7119

MOTION/RECOMMENDATION:

Approve Amendment #1 to PS-2564-07/JVP- Miscellaneous Capacity and Safety Improvements with Kittelson & Associates, Inc., of Orlando, Florida, to replace Section 6 - Payment & Billing to include additional language on Work Order retainage, and to replace Section 5 - Compensation to change the Board approved Not-To-Exceed Amount of \$100,000.00 to an Estimated Annual Usage Amount. In addition, approve an increase to the new Estimated Annual Usage amount by an additional \$50,000.00 per year.

County-wide

Ray Hooper

BACKGROUND:

PS-2564-07/JVP provides for various traffic studies on County roadway projects including before and after studies, benefit/cost studies and other needed traffic operations/transportation planning related services. On February 26, 2008, the Board approved the negotiated rates and awarded the agreement to Kittelson of Orlando, Florida. Subsequently, Kittelson's Corporate office expressed concern with regard to the Agreement section related to indemnification, and on April 8, 2008, the Board approved the revised Award Agreement.

Since the award, Agreement language with regard to Work Order retainage has been revised to allow Project Managers to determine retainage at the Work Order level for projects less than \$100,000.00, and staff recommends the replacement of Section 6 - Payment & Billing under the Agreement. The current Agreement also includes an annual Not-To-Exceed amount of \$100,000.00 within Section 5 - Compensation. Staff has determined that the amount of work within the first Agreement period from May 19, 2008 through May 18, 2009 will exceed this amount, and recommends the replacement of Section 5 - Compensation to change the annual Not-To-Exceed amount of \$100,000.00 to an Estimated Annual Usage. In addition, staff recommends the approval of an increase to the Estimated Annual Usage by an additional \$50,000.00 per year, to cover additional studies such as the Benefit Cost Study.

The following is the summary of the annual estimated cost of the Agreement:

| | |
|---|--------------------|
| Original Board Approved Annual Not-To-Exceed Amount | \$100,000.00 |
| Current Request (Change to Estimated Usage & increase per year) | <u>\$50,000.00</u> |
| Revised Annual Estimated Usage Amount | \$150,000.00 |

Authorization for the performance of services by the Consultant under the Agreements shall be

in the form of written Work Orders issued and executed by the County, and signed by the Consultant. The work and dollar amount for each Work Order shall be negotiated on an as-needed basis for the specific project, and funded within approved budget amounts.

STAFF RECOMMENDATION:

Staff recommends that the Board approve Amendment #1 to PS-2564-07/JVP- Miscellaneous Capacity and Safety Improvements with Kittelson & Associates, Inc., of Orlando, Florida, to replace Section 6 - Payment & Billing to include additional language on Work Order retainage, and to replace Section 5 - Compensation to change the Board approved Not-To-Exceed Amount of \$100,000.00 to an Estimated Annual Usage Amount. In addition, approve an increase to the new Estimated Annual Usage amount by an additional \$50,000.00 per year.

ATTACHMENTS:

1. PS-2564-07_JVP - Amendment 1 (Kittelson)

Additionally Reviewed By:

County Attorney Review (Ann Colby)

**FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT
MISCELLANEOUS CAPACITY AND SAFETY IMPROVEMENT EVALUATIONS
(PS-2564-07/JVP)**

THIS FIRST AMENDMENT is made and entered into this _____ day of _____, 20____ and is to that certain Agreement made and entered into on the 19th day of May, 2008, between **KITTELSON & ASSOCIATES, INC.**, whose address is 225 E. Robinson Street, Suite 450, Orlando, Florida 32801, hereinafter referred to as "CONSULTANT," and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

WHEREAS, CONSULTANT and COUNTY entered into the above-referenced Agreement on May 19, 2008, for consultant services regarding miscellaneous capacity and safety improvement evaluations; and

WHEREAS, the parties desire to amend the Agreement so as to enable both parties to continue to enjoy the mutual benefits it provides; and

WHEREAS, Section 22 of the Agreement provides that any amendments shall be valid only when expressed in writing and duly signed by the parties,

NOW, THEREFORE, in consideration of the mutual understandings and agreements contained herein, the parties agree to amend the Agreement as follows:

1. Section 5 of the Agreement is amended to read:

SECTION 5. COMPENSATION. COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee Basis" or on a "Time Basis Method". If a Work Order is issued under a Time Basis Method, then CONSULTANT shall be compensated in accordance with the rate schedule attached as Exhibit

C. If a Work Order is issued for a Fixed Fee Basis, then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses.

2. Section 6 of the Agreement is hereby amended to read:

SECTION 6. PAYMENT AND BILLING.

(a) If the Scope of Services required to be performed by a Work Order is clearly defined, the Work Order shall be issued on a Fixed Fee Basis. CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Limitation of Funds amount. CONSULTANT is not authorized to exceed that amount without the prior written approval of COUNTY. Said approval, if given by COUNTY, shall indicate a new Limitation of Funds amount. CONSULTANT shall advise COUNTY whenever CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a Fixed Fee Basis, CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a

percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) and over in value and one hundred percent (100%) of the approved amount on Work Orders under ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in value issued on a Fixed Fee Basis.

(e) For Work Orders issued on a Time Basis Method with a Not-to-Exceed amount, CONSULTANT may invoice the amount due for actual work hours performed, but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) and over in value issued on a Time Basis Method with a Not-to-Exceed amount and one hundred percent (100%) on Work Orders under ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in value.

(f) Each Work Order ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) and over in value issued on a Fixed Fee Basis or Time Basis Method with a Not-to-Exceed amount shall be treated separately for retainage purposes. If COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a Time Basis Method with a Limitation of Funds amount, CONSULTANT may invoice the amount due for services actually performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a Time Basis Method with a Limitation of Funds amount.

(h) Payments shall be made by COUNTY to CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. At the close of each calendar month, CONSULTANT shall render to COUNTY a properly dated itemized invoice describing any services rendered, the cost of the services, the name and address of CONSULTANT, Work Order Number, Contract Number, and all other information required by this Agreement.

The original invoice and one (1) copy shall be sent to:

Director of County Finance
Seminole County Board of County Commissioners
Post Office Box 8080
Sanford, Florida 32772

Two (2) copies of the invoice shall be sent to:

Seminole County Engineering Division
520 W. Lake Mary Boulevard, Suite 200
Sanford, Florida 32773

(i) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from CONSULTANT.

3. Except as herein modified, all terms and conditions of the Agreement shall remain in full force and effect for the term of the Agreement, as originally set forth in said Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument for the purpose herein expressed.

ATTEST:

KITTELSON & ASSOCIATES, INC.

, Secretary

By: _____
, President

(CORPORATE SEAL)

Date: _____

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

ATTEST:

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BRENDA CAREY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

County Attorney
AEC/sjs/lpk
9/4/08 9/16/08
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