

Replacement

Meeting Date
9/1/2015



AGENDA	
Section	CONSENT
Item No.	II.D.4

**AGENDA REPORT**  
*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

SUBJECT:	Approval RE: Interlocal Agreement between the Brevard County Board of County Commissioners and Space Coast Transportation Planning Organization
DEPT/OFFICE:	Transportation Planning Office

Requested Action:  
 It is requested that the Board of County Commissioners approve the Interlocal Agreement and First Amendment to the Lease Agreement with the Space Coast Transportation Planning Organization

Summary Explanation & Background:  
 The Space Coast Transportation Planning Organization entered into an Interlocal Agreement for Services with Brevard County Board of County Commissioners on August 26, 2010 which was subsequently amended with a First Amendment on August 23, 2011, incorporating audit services, and a Second Amendment on December 16, 2014 regarding an increase in the "line of credit", and expires on September 30, 2015. This Agreement incorporates the original Interlocal Agreement for Services as well as both the First and Second Amendments into a new Interlocal Agreement beginning October 1, 2015 and shall extend to and include September 30, 2020. The TPO shall have an option to renew this Agreement for an additional five (5) year term until September 30, 2025.

The First Amendment to the Lease Agreement clarifies some language and exercises the extension of the lease agreement. This amendment includes additional services being provided by/to the TPO, namely Intelligent Transportation Systems (ITS), Transportation Systems Management & Operations (TSM&O), and Information Technology services.

Both agreements were approved by the County Attorney on August 11, 2015.

FISCAL IMPACT: Failure to execute the Interlocal could jeopardize the eligibility of Brevard County to receive federal transportation funds for highway, port, transit and airport improvements.

Staff Contact: Bob Kamm, x56890, E-mail: bob.kamm@brevardcounty.us

Exhibits Attached: NONE

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager, Frank Abbate	Department Director / Extension
Stockton Whitten	Assistant County Manager, Venetta Valdengo	Bob Kamm Space Coast TPO Executive Director x56890



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
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September 2, 2015

MEMORANDUM

TO: Bob Kamm, Space Coast Transportation Planning Organization Executive Director

RE: Item II.D.4., Resolution and Interlocal Agreement with Space Coast Transportation Planning Organization for First Amendment to Lease Agreement

The Board of County Commissioners, in regular session on September 1, 2015, adopted Resolution No. 15-145, annual Municipal Service Benefit Unit Assessment Roll; approved the Interlocal Agreement with Space Coast Transportation Planning Organization; and approved the First Amendment to the Lease Agreement between Brevard County and the Space Coast Transportation Planning Organization. Enclosed are three certified copies of the Resolution, executed Interlocal Agreement, and executed First Amendment to the Lease Agreement.

**Upon execution by Space Coast Transportation Planning Organization, please return the fully-executed Interlocal Agreement and First Amendment to the Lease Agreement.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encls. (5)

cc: County Manager  
Finance  
Budget

Resolution No. 15 -145

WHEREAS, an annual Municipal Service Benefit Unit Assessment Roll has been prepared, a summary of which is attached to and made a part of this Resolution by this reference, and labeled Exhibit "A"; and

WHEREAS, a copy of such annual Municipal Service Benefit Unit Assessment Roll has been furnished to the Brevard County Tax Collector for collection in the same manner as ad valorem taxes are collected; and

WHEREAS, the Board is satisfied that the annual Municipal Service Benefit Unit Assessment Roll has been prepared in conformity with the Final Assessment Rolls for each project that have been adopted by the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The Board of County Commissioners of Brevard County, Florida, hereby ratifies and confirms that the annual Municipal Service Benefit Unit Assessment Roll for County fiscal year beginning October 1, 2015, is in conformity with the Final Assessment Rolls for each project that have been adopted by the Board.
2. The Board of County of Commissioners of Brevard County, Florida, hereby certifies, ratifies and confirms such annual Municipal Service Benefit Assessment Rolls as sent to the Tax Collector. The Tax Collector shall collect such special assessments in the same manner as ad valorem taxes are collected.

3. A certified copy of this Resolution shall be delivered to the Tax Collector of Brevard County, Florida.

4. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED AND ADOPTED this 1st day of September, 2015.

ATTEST:



\_\_\_\_\_  
Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



By: \_\_\_\_\_  
Robin Fisher, Chairman

As approved by the Board on 1<sup>st</sup> September, 2015.

INTERLOCAL AGREEMENT FOR SERVICES  
BY AND BETWEEN  
BREVARD COUNTY AND  
THE SPACE COAST TRANSPORTATION PLANNING ORGANIZATION

THIS INTERLOCAL AGREEMENT, made and entered into this \_\_ day of \_\_\_\_\_, 2015, by and between the Space Coast Transportation Planning Organization, a Metropolitan Planning Organization created and operating pursuant to Section 339.175, Florida Statutes (hereinafter called the "TPO"), and the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter called the "COUNTY").

W I T N E S S E T H

WHEREAS, Section 339.175, Florida Statutes, provides for the designation of a metropolitan planning organization for each urbanized area of the state; and

WHEREAS, the Governor of Florida has designated the TPO as the metropolitan planning organization for the Palm Bay-Melbourne and Titusville urbanized area, created and operated pursuant to an Interlocal Agreement entered into in accordance with Sections 339.175(2) and 163.01, Florida Statutes, between the Florida Department of Transportation and the affected units of general and special purpose local governments within the Palm Bay-Melbourne and Titusville urbanized area; and

WHEREAS, the aforesaid Restated Interlocal Agreement was recorded on July 15, 2014, in Official Records Book 7166, Page 2144, Public Records of Brevard County, Florida; and

WHEREAS, pursuant to Section 339.175(2)(b), Florida Statutes, the TPO is an independent governmental entity separate and distinct from the COUNTY; and

WHEREAS, pursuant to Section 339.175(6)(g), Florida Statutes, the TPO has the authority to contract with the COUNTY and other governmental entities for the provision and exchange of certain services; and

WHEREAS, Brevard County is a charter county of the State of Florida pursuant to Article VIII, Section 1(g), Florida Constitution of 1968 and Sections 7.05 and 125.60 et seq., Florida Statutes; and

WHEREAS, the TPO is desirous of obtaining certain services from the COUNTY to assist the TPO staff in managing the continuing,

cooperative and comprehensive transportation planning process as mandated by State and Federal law; and

WHEREAS, the COUNTY is desirous of obtaining certain transportation planning services from the TPO to assist the COUNTY in managing its comprehensive transportation planning process; and

WHEREAS, the provision of such services will mutually benefit the parties hereto and the residents of Brevard County, Florida.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

**SECTION 1. PURPOSE.** The purpose of this Interlocal Agreement is to define the services to be provided the TPO by the COUNTY and to fix the compensation to the COUNTY for such services and to define the services to be provided to the COUNTY by the TPO and to fix the compensation to the TPO for such services, as agreed to by the parties described herein.

**SECTION 2. TERM.** The term of this Agreement shall begin October 1, 2015, and shall extend to and include September 30, 2020. The TPO shall have an option to renew this Agreement for an additional five (5) year term until September 30, 2025. The TPO must provide written notice to the County by July 1, 2020 of its intent to renew this Agreement for an additional five (5) year term terminating on September 30, 2025.

**SECTION 3. COUNTY SERVICES.** The COUNTY shall provide the following support services to the TPO:

3.1 Office Space. The COUNTY shall provide the TPO with office space suitable to conduct the TPO's business, subject to the terms and conditions of a separate lease agreement between the COUNTY and the TPO.

3.2 Facilities. The COUNTY shall provide security for TPO meetings conducted after normal business hours at no charge. The COUNTY shall provide to the TPO facility services such as janitorial services, pest control, repair and maintenance of HVAC systems, etc., as described in the aforementioned lease agreement between the COUNTY and the TPO.

3.3 Meeting Space. As provided in the aforementioned lease agreement, the COUNTY shall provide suitable meeting space (as reasonably determined by the TPO) for the TPO to conduct its advisory and governing board meetings. The TPO shall coordinate with the COUNTY to reserve such meeting and conference rooms. The COUNTY,

in accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, shall provide assistance to persons with disabilities needing special accommodations to participate in meetings held on COUNTY property.

The TPO will be provided services of the Space Coast Government Television (SCGTV) staff and equipment, for the taping and re-broadcasting of the TPO Governing Board meetings, all at no cost to the TPO.

3.4 Mail Services. The COUNTY shall authorize the TPO to use the COUNTY's mail courier service. The TPO will pay costs for mailing using the United States Postal Service ("USPS") based on actual postage due. Handling fees charged by the courier to pick up and distribute TPO mail to the USPS shall be paid by the TPO.

3.5 Finance. The COUNTY shall create a cost center within the budgetary system of the COUNTY for the TPO and provide financial management of Federal, State and local monies granted to the TPO in accordance with Federal and State of Florida generally accepted accounting and grant management procedures, as approved from time to time by the Florida Department of Transportation ("FDOT"), the Federal Highway Administration ("FHWA"), and the Federal Transit Administration ("FTA"), *inter alia*. The cost center shall include accounts payable and accounts receivable and shall be operated as a separate, segregated fund with self-balancing accounts. The cost center accounting system shall be capable of providing monthly reconciliations to budget figures, depicting the amount of the TPO budget year that has passed and the amount of each revenue or expenditure account, sub-account, task, or sub-task that has been expended.

3.6 Purchasing. The COUNTY shall provide the following purchasing services to the TPO: (a) processing purchase order requests and any applicable changes; (b) approval of TPO vendors; and (c) credit card applications and renewals. The TPO shall follow the provisions of Section 287.055, Florida Statutes ("The Consultants' Competitive Negotiation Act"), for the procurement of professional services upon exceeding the threshold amount provided in s.287.017. The TPO shall follow its own adopted procedures and policies, and shall adhere to all Federal and State of Florida laws regarding procurement of services. The TPO will solicit and utilize services independent of the COUNTY's purchasing Office and will utilize its own staff for purchasing of services or material.

3.7 Payroll. The COUNTY shall provide payroll services for the TPO staff and include TPO staff in the processing of bi-weekly payroll. Provided that the TPO presents the COUNTY with required

time sheets, the COUNTY shall promptly process the bi-weekly payroll and will authorize the Brevard County Clerk of the Court's County Finance Department to administer and issue the payroll checks, without further action by the County.

3.8 Budget. The COUNTY shall include TPO revenues and expenditures in the County budget system, and will authorize the Brevard County Clerk of Court's County Finance Department, without further action by the COUNTY, to pay TPO expenses from appropriated funds subject to reimbursement. Other than providing basic cost information (i.e. indirect rates, Information Technology direct charges, FRS, employee health insurance, employee life insurance, etc.) to the TPO, the COUNTY shall have no authority over the approval of the TPO's budget.

3.9 Audit. The COUNTY agrees to allow the TPO, at the TPO's option, to utilize the COUNTY's independent accounting firm or certified public accountant for performance of its annual accounting and budget audit. The TPO shall pay reasonable costs for such services. Further, the TPO and the County agree that the TPO funds and accounts shall not be included in the COUNTY's Comprehensive Annual Financial Report. Audits shall be conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes for the Fiscal Year ending September 30, 2015. For Fiscal Year ending September 30, 2016 and beyond, if required by State of Florida or federal law or regulation, audits shall be conducted in accordance with the Uniform Administrative Requirement, Cost Principles, and Audit Requirement for Federal Awards (also known as the Super Circular) codified at the 2 CFR Part 200 and any other standards or requirements as required by federal or state agencies having jurisdiction over TPO funds and as required from time to time by the FDOT, the FHWA, and the FTA.

If the TPO requests that it's annual accounting and budget audit be performed by the COUNTY's independent accounting firm or certified public accountant as part of the COUNTY's annual accounting and budget audit, the COUNTY and the TPO agree at no cost to the other party to provide to each other and any other third party with all information necessary to complete said audit.

Because the TPO is regularly audited by the FHWA for performance and compliance, the COUNTY shall not undertake an internal or performance related audit of the TPO or request any other entity to perform such audit nor shall the TPO be required to pay for the same without reasonable cause.

3.10 Communications/Information Technology. The COUNTY Information Technology Department (the "ITD") currently has and

shall maintain a separate Service Level Agreement with the Space Coast TPO to provide the TPO with communications and technical support services such as telephone and computer hardware and software provisioning, decommissioning, upgrading, and repairing. The COUNTY shall provide the TPO with use of the COUNTY's telephone communication system, including functions such as the message system, phone configurations, local and long distance calling and provide any necessary repairs to the system. The COUNTY will permit the TPO to have access to and use of the local cable broadcasting network, as provided in the Brevard County Government Center. Computer services will include trouble-shooting of computer failures (hardware and software) and use of COUNTY networks including the COUNTY email exchange services, Internet and other networks that enhance the technical capabilities of the TPO.

Charges for Communications and Information Technology services shall be calculated annually through the COUNTY's indirect cost allocation plan, with new rates effective October 1<sup>st</sup> of each year. The cost plan calculations shall be reviewed and approved by TPO staff prior to approval and adoption by the COUNTY. The cost plan shall comply with all applicable State and Federal regulations and follow OMB Circular A-87. The annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the TPO through the COUNTY System Applications and Products ("SAP") financial system on a monthly basis. For purposes of this Agreement the SAP financial system consists of various modules, including the Financial Accounting (FI) module, Controlling (CO) module, Production Planning (PP) module, Materials Management (MM) module, and the Sales and Distribution (SD) module.

- a. Equipment. The TPO Governing Board shall approve all procurement of telephone and computer hardware and software in excess of Five Thousand Dollars (\$5,000) to be used by TPO staff and shall obtain approval from the FHWA as outlined in the TPO's Unified Planning Work Program (UPWP). Procurement of hardware and software less than Five Thousand Dollars (\$5,000) shall be approved by the TPO Executive Director. The TPO shall coordinate with the COUNTY to ensure equipment is compatible with the COUNTY system prior to purchase. The ITD shall not be responsible for providing services on software or equipment purchased by the TPO that was not approved prior to purchase by the ITD.
- b. Services. Except for the initial setup of the telephone and information/computer systems which have already occurred, the COUNTY shall promptly (within not more than forty-eight (48) hours) provide the on-going maintenance,

installation, upgrades, setup or reinstallation resulting from the TPO offices being moved or relocated within the Brevard County Government Center.

The TPO staff shall follow all County policies, administrative orders and procedures relating to the use of the County computer network, servers, telephone and computer equipment, hardware or software when using County equipment and network.

Any software or telecommunication licenses obtained by the COUNTY on behalf of the TPO shall be obtained in the name of the COUNTY.

3.11 Travel. All travel by TPO personnel and Governing Board members shall follow TPO adopted travel policies and authorizations. All travel expenses shall be paid consistent with the provisions of Section 112.061, Florida Statutes. The TPO shall pay all Class "C" travel expenses, as defined in Section 112.061. The COUNTY shall have no function or responsibility with respect to the travel of any TPO staff or Governing Board members.

#### **SECTION 4. TPO SERVICES.**

4.1 Services to be Performed. The TPO shall provide the following transportation planning services to the COUNTY:

- a. State and Federal Funds. All required transportation planning and programming activities necessary to maintain Brevard County's eligibility to receive Federal and State transportation funds.
- b. Crash Data. The TPO shall provide technical resources and data, as requested by the COUNTY.
- c. Traffic Counts. The TPO shall annually collect traffic counts on various roadways throughout Brevard County through the use of contracted services. The TPO shall provide these counts to the COUNTY as they become available.
- d. Concurrency Review. The TPO shall provide technical support to the County on the establishment and monitoring of established Maximum Allowable Volumes (MAVs) on roadways and associated Level of Service used during the County's concurrency review program.

- e. Transportation Systems Management & Operations (TSM&O). The TPO shall provide coordination and support services to the County in the establishment of TSM&O activities and will provide support in the implementation of the TPO Intelligent Transportation Systems Master Plan.
- f. Pedestrian Facilities Planning. TPO staff shall support and assist the COUNTY with the planning and implementation of pedestrian facilities throughout the COUNTY. This includes, but is not limited to, review of site plans, field reviews, multi-jurisdiction coordination and public involvement.
- g. Bicycle Facilities Planning. TPO staff shall support and assist the COUNTY with the planning and implementation of bicycle facilities throughout the COUNTY. This includes, but is not limited to, field reviews, multi-jurisdiction coordination and public involvement.
- h. Trail Facilities Planning. TPO staff shall support and assist the COUNTY with the planning and implementation of trail facilities throughout Brevard County. This includes, but is not limited to field reviews, multi-jurisdiction coordination and public involvement.
- i. Public Involvement/Outreach. The TPO staff shall support and assist the COUNTY with reaching out and educating the public on transportation issues. Services shall include, but not be limited to, presentations and attendance at public meetings and special events, and dealing with public inquiries and requests/complaints.
- j. Traffic Impact Studies. TPO staff shall provide support and assist the COUNTY with the review of traffic impact studies on COUNTY facilities.
- k. Inter-department Coordination. TPO staff shall provide support and assist the COUNTY with inter-department coordination of transportation planning programs and projects. The COUNTY departments to be involved in the inter-department coordination include, but are not limited to, Planning and Development, Public Works, Parks & Recreation, and Natural Resources.
- l. Governmental Coordination. TPO staff shall coordinate with other modal agencies, such as the FDOT and the East Central Florida Regional Planning Council, on transportation issues and projects.

- m. Agency Transportation Inter-governmental Coordination. The TPO staff will coordinate and communicate on behalf of the COUNTY with local government entities, modal agencies and applicable regional, State and Federal agencies to develop and implement a comprehensive, coordinated and continuous transportation planning process.
- n. Insight and Updating on Transportation Legislation. The TPO staff shall be current on developments in transportation planning programs, services, and legislation and shall provide technical support to the COUNTY and other local government agencies.
- o. Legislative Recommendations. The TPO shall compile legislative recommendations for the COUNTY to submit to the Brevard County legislative delegation and other regional bodies relating to transportation planning and transportation-related aspects of comprehensive planning. The TPO shall consult and coordinate with the COUNTY and other local governments on assessing the impacts or opportunities presented by State and Federal legislation and policy initiatives.
- p. Comprehensive Planning. The TPO shall assist the COUNTY and other local governments in developing elements of their Comprehensive Plans so that such plans will be as consistent as possible with the TPO Transportation Plan as required by State statute.
- q. Other. Any additional tasks or services requested to be performed by the TPO for the COUNTY, not delineated in this Agreement, shall be performed upon separate written agreement of the parties.

4.2 Limitation on Work to be Performed. The COUNTY understands and agrees that the TPO shall perform any of the foregoing services for the COUNTY during the term of this Agreement. The TPO shall bill the COUNTY based on actual costs incurred in fifteen (15) minute increments and up to the annual work effort compensation allocated by the COUNTY as described in Section 7.1.

## SECTION 5. PERSONNEL.

5.1 TPO Staff. The TPO Executive Director shall serve under the direction, supervision and control of the TPO Governing Board. The TPO Executive Director, with the consent of the TPO Governing Board, shall employ such personnel as may be necessary to perform

the functions of the TPO. The COUNTY shall have no management or control over the TPO staff.

As an independent agency, the TPO shall have the authority without COUNTY approval to: add or delete staff and staff positions from time to time; adjust salaries and benefits for its staff; and to determine when and if to hire, terminate, discipline, layoff, furlough or suspend personnel working for the TPO.

TPO staff shall receive certain COUNTY employment related benefits as set forth in Paragraph 5.4 below, but shall otherwise not be considered or regarded as employees of the COUNTY and shall operate independently of the control, supervision and direction of the COUNTY. The TPO shall perform services under this Agreement as an independent contractor and nothing contained herein shall be construed or interpreted to constitute that the TPO or any of staff to be agents, employees, or representatives of the COUNTY.

5.2 Personnel Policies. The TPO shall from time to time define job descriptions, classifications, pay grades, salary ranges, and leave accruals for each of its TPO staff positions. The retention, supervision, discipline, evaluation and dismissal of TPO employees shall be under the direction of the TPO as described in the TPO Personnel Policies. All Personnel Policies shall be in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.. Other than as may be specifically set forth herein, the COUNTY's Merit System Policies and Procedures shall not apply to the staff of the TPO.

5.3 Human Resources. The TPO may utilize all personnel services offered by the COUNTY Human Resources Office, or its successor agency. Such personnel services include the recruitment, hiring, and applicable pre-employment physical and drug testing of TPO employees. The COUNTY shall permit TPO employees, at no cost difference than what is charged to COUNTY employees, to participate in personnel-related training courses and programs. The COUNTY agrees to permit TPO staff to receive the COUNTY's unemployment compensation benefits, on the same basis the COUNTY offers such benefits to COUNTY employees. Charges for services provided by COUNTY Human Resources Office, or its successor agency, shall be included in the COUNTY indirect cost plan, and shall be the same as the pro rata charges to county departments with new rates effective October 1<sup>st</sup> of each year. The indirect cost plan calculations shall be reviewed and approved by the TPO staff prior to approval and adoption by the COUNTY. The indirect cost plan shall comply with all applicable State and Federal regulations and follow 2 C.F.R. § 225. The annual charge shall be divided into twelve (12) equal

installments and shall be directly billed to the TPO through the COUNTY SAP financial system on a monthly basis.

5.4 Employee Benefits. The TPO may purchase, for its employees (as further defined herein), and participate in the COUNTY's employee benefits programs on the same basis the COUNTY offers such benefits to the employees and retirees of the Board of County Commissioners. Such benefits currently include health plan(s), health reimbursement accounts (HRA's), health flex spending accounts, wellness programs, employee assistance program (EAP), pharmacy plan, dental plan, vision plan, life insurance, supplemental life insurance, long term disability insurance, short term disability insurance, etc.. The TPO understands and agrees that the employee benefits programs which the COUNTY may offer will change from time to time. The TPO agrees that benefits can be withdrawn at any time that the COUNTY similarly withdraws such benefits for employees of the Board of County Commissioners. If programs are added or removed, the TPO will be advised when changes are contemplated at the same time COUNTY employees are advised.

The terms of such participation in the group health plan shall be as set forth in a separate Group Health Plan Agreement.

Only salaried and hourly employees of the TPO are eligible to participate. Part-time, temporary, seasonal and substitute are not eligible to participate in any of the benefits offered under the Group Health Plan Agreement.

TPO staff will be permitted membership in the Florida Retirement System (FRS). The COUNTY agrees to provide support to TPO employees for participation in FRS, to the same extent as provided to COUNTY employees. The COUNTY will allow TPO employees to participate in deferred compensation programs offered through the COUNTY.

5.5 Insurance. The TPO may purchase on behalf of its employees and participate in the automobile, general liability and workers compensation insurance programs purchased by the COUNTY for the benefit and protection of its officers and employees. Any TPO employee, while acting in the course and scope of his/her employment for the TPO, shall be considered covered under such plans to the same extent and under the same conditions as a COUNTY employee.

## SECTION 6. BUDGET AND REIMBURSEMENT.

6.1 Budget. The TPO shall annually prepare a budget necessary to perform the functions of the TPO as mandated by Federal and State law. The TPO budget shall provide the following:

- a. The budget shall be prepared so as to cover all of the costs of support services to be provided by the COUNTY to the TPO pursuant to this Agreement. The budget shall also include revenue payable to the TPO by the COUNTY for all support services the TPO provides to the COUNTY pursuant to this Agreement.
- b. The budget shall be submitted to the COUNTY by July 1<sup>st</sup> of each calendar year, or at a time agreed upon by both parties. The TPO shall not be required to prepare or submit to the COUNTY forms that are considered part of the COUNTY's budget process.
- c. The TPO Governing Board shall approve the TPO's annual operating budget. The COUNTY shall have no authority in reviewing or approving the budget.
- d. Changes to the budget shall be approved by the TPO Governing Board. TPO staff shall provide appropriate information to the COUNTY's Budget Office to have changes processed. The COUNTY shall have no authority to approve or deny any changes to the TPO budget. A transmittal order from the TPO signed by the TPO Governing Board Chair or the TPO Executive Director with specific directions shall be sufficient to validate adoption of a budget or amendment thereto or an order to pay a particular purchaser order, voucher, or requisition.
- e. It is the responsibility of the TPO to ensure that all appropriate Federal and State of Florida budget rules and regulations are followed in preparing their annual budget. If the COUNTY's Budget Office determines the budget is inconsistent with Federal or State of Florida budget, the COUNTY will provide written notice to the TPO.

6.2 Reimbursement of Fund Advances. The TPO shall reconcile its accounts by submitting invoices to the appropriate Federal, state and local grantors for program expenditures and forward reimbursement payments to the COUNTY upon receipt.

## SECTION 7. COMPENSATION AND COSTS.

### 7.1 Compensation to the TPO.

- a. The COUNTY agrees to compensate the TPO for services, as provided and described in this Interlocal Agreement, based on actual costs incurred by the TPO.

- b. The TPO shall track all hours of service and prepare and submit quarterly invoices to the COUNTY for services performed. TPO staff that are eligible to perform services for the COUNTY are listed in the table in **ATTACHMENT "A"** according to the TPO Professional Classification. The COUNTY shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes section 218.70, *et seq.* The parties agree the TPO shall bill the COUNTY based on actual costs incurred in fifteen (15) minute increments. The annual work effort is not to exceed Sixty Thousand Dollars (\$60,000) without prior approval by both parties, minus the FTA grant local match as calculated in Section 7.5 of the Interlocal Agreement.
- c. Compensation by the COUNTY to the TPO for the annual work effort performance of tasks in Section 4 of this Agreement shall not exceed Sixty Thousand Dollars (\$60,000) minus the FTA grant local match as calculated in Section 7.5 below, for the COUNTY's Fiscal Year October 1, 2015 through September 30, 2016, without prior approval by the TPO Executive Director. For all Fiscal Years commencing after September 30, 2015, the annual work effort plan and budget allocation for transportation planning work outlined in Section 4.1 of this Agreement to be performed for the COUNTY by the TPO shall be agreed to from time to time in writing; providing, that if no agreement is reached, the annual work effort budget shall be Sixty Thousand Dollars (\$60,000) for hourly billable charges for service and expenses and for the FTA Section 5305(d) grant local match requirement.
- d. In the event that this amount is expended prior to the end of the COUNTY's Fiscal Year, TPO staff will coordinate with the COUNTY on any necessary budget amendments and negotiation of requested work, which may be otherwise agreed to by the TPO Executive Director and the Brevard County Manager.
- e. Any additional task(s) requested by the COUNTY to be performed by the TPO for the COUNTY, not delineated in this Agreement, shall be performed upon separate written agreement of the parties. Subject to a budget allocation increase to the TPO by the COUNTY, any additional tasks requested shall reflect TPO work effort costs. The parties agree that if the TPO does not have adequate time and/or staffing resources, the TPO may, upon notice to the COUNTY, decline performance of additional work effort.

- f. The COUNTY is exempted from payment of Florida state sales and use taxes and Federal Excise tax. If at anytime, the COUNTY shall be subject to Florida state sales and use taxes and Federal Excise tax, the COUNTY shall be billed and shall pay the same as it shall be applicable to the TPO charges for service. To the extent that the TPO is not exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the TPO to suppliers for taxes on materials used to fulfill its contractual obligations with the COUNTY, the COUNTY may be called upon to reimburse the TPO for said charges. The TPO shall not use the COUNTY's exemption number in securing such materials or services.

7.2 Compensation to the COUNTY. In consideration for the services to be provided herein by the COUNTY, the TPO shall budget annually a sum sufficient to reimburse the COUNTY for all costs incurred by the COUNTY for services, self-insurance, workers compensation, and direct and indirect costs associated with TPO operations. Actual cost estimates shall be used with the exception of indirect cost(s), which shall be calculated in accordance with 2 CFR Part 200, previously known as OMB Circular A-87.

7.3 Costs. Reimbursement of costs incurred by the TPO for such items as computerized research, long distance telephone or facsimile transmissions, long distance courier, postage, blueprint copying or preparation, photographs, x-rays, bulk third party copying, bulk mailings, and photographic copying, will be at cost to the TPO. The COUNTY shall reimburse these costs only upon documented third party vendor charges and receipts.

The COUNTY will not compensate the TPO for overhead costs and routine expenses such as office overhead, local phone calls, local facsimile transmissions, routine postage, local travel expenses, local courier, word processing, clerical and secretarial services.

7.4 Billing Format. The TPO shall bill the COUNTY for the services performed by the TPO on a quarterly basis, or other mutually agreed upon schedule. Billable hours for service performed by TPO staff shall be measured in fifteen (15) minute increments. Compensation of TPO staff hours will be for actual time spent providing services to the COUNTY.

Each invoice shall be submitted in one (1) copy in a format that is acceptable to the COUNTY and includes, at a minimum, the following information:

- a. Inclusive dates of the month covered by the invoice;

- b. Itemization of the date and hours billed (if hourly);
- c. A concise, meaningful description of the services rendered, with sufficient detail to enable the COUNTY to evaluate the services rendered and costs;
- d. The person(s) who performed the services for each day the services were performed; and
- e. A list of all invoiced costs to be reimbursed. Invoiced costs must be accompanied by copies of actual receipts.

7.5 Federal Transit Administration Grant Match. The COUNTY shall provide the local match requirements for the FTA grants (currently approximately \$24,000 per year). The actual match amount is currently calculated annually at ten percent (10%) of the full FTA 49 U.S.C. §5305(d) annual grant allocation. The match enables the TPO to secure FTA funding that is used to support bicycle/pedestrian and trail planning and education programs, Space Coast Area Transit studies and transportation and operational planning support such as Intelligent Transportation Systems planning. The match amount shall be provided to the TPO through use of the COUNTY's SAP financial program. The COUNTY's local match shall be provided at such time and in such amount as needed by the TPO. For planning purposes, the COUNTY is advised that the local match is usually provided on a monthly basis.

7.6 Transportation Disadvantaged Planning Grants. The TPO shall transfer and the COUNTY agrees to provide the administration, operations and funding for the State transportation disadvantaged planning grants awarded to the TPO.

7.7 Line of Credit. At no cost to the TPO, the COUNTY agrees to provide the TPO with an annual "line of credit" for each COUNTY fiscal year of up to Five-Hundred Thousand Dollars (\$500,000), for operating expenses. The line of credit shall be repaid from time to time by the TPO from State and Federal transportation planning grants that the TPO receives as a metropolitan planning organization. The TPO shall prepare and submit invoices in a timely manner for reimbursement of expenses by the TPO's State and Federal transportation planning grants. Such reimbursement shall be promptly deposited with the COUNTY upon receipt by the TPO and credited to any outstanding TPO line of credit balance. The COUNTY shall not penalize the TPO, limit its line of credit, delay line of credit payments to the TPO, or charge interest or other fees for delayed or disapproved reimbursements from State or Federal sources.

7.8 Concurrency Support. The COUNTY agrees to promptly collect and forward to the TPO, concurrency review fees as approved and adopted by the Board of County Commissioners on November 18, 2003, Resolution No. 03-283. Concurrency fees are used for support

services the TPO Staff provides to the COUNTY as outlined in Section 4, subsections (c) and (j) above.

#### **SECTION 8. TERMINATION.**

8.1 Termination. If either party fails or refuses to perform any of the provisions of this Agreement or otherwise fails to timely satisfy the provisions of this Agreement, either party may notify the other party in writing of the nonperformance and terminate this Agreement or such part of the Agreement as to which there has been delay or failure to properly perform. Such termination is effective ninety (90) days after the party's receipt of notice of termination.

8.2 Termination for Convenience. Either the TPO or the COUNTY may terminate this Agreement for convenience by providing written notice to the other party at least one hundred eighty (180) days prior to the date that this Agreement is proposed to be terminated.

8.3 Termination- Records and Payment. Upon termination of this Agreement, each party shall turn over to the other party within a reasonable period of time (not to exceed 30 days) all records held by it with respect to this Agreement. The COUNTY shall release all funds of the TPO then held by the COUNTY after the COUNTY applies the funds to any outstanding amounts owed hereunder to the COUNTY. The COUNTY shall only be responsible for payment for services provided prior to the effective date of termination, or the date upon which the TPO received notice of the termination of this Agreement, whichever shall be later in time. The parties agree that neither party waives any of its rights to seek damages of any kind against the other party in the event of any default of any of the terms hereunder. After termination, this Agreement shall be of no further continuing effect, and the parties have no obligations to each other hereunder, except those noted as surviving termination, those duties and responsibilities to be carried out upon or after termination, and those duties or responsibilities arising on or before the date of termination.

**SECTION 9. RECORD-KEEPING AND RETENTION.** The TPO shall prepare and retain all books, papers, records and accounts related to this Agreement in accordance with generally accepted accounting procedures and with federal requirements, including but not limited to, 23 CFR Part 420, 49 CFR Part 18, and 49 CFR 18.42. All books, papers, records and accounts made in connection with this Agreement are open to inspection and shall be retained by the TPO for a period of three (3) years after termination of this Agreement. All books, papers, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes, and appropriate records retention requirements as may be implemented by

the State of Florida from time to time. Notwithstanding the foregoing provisions, all books, papers, records and accounts made in connection with this Agreement or otherwise by the TPO shall not be open to inspection or disclosure pursuant to this Agreement or otherwise when said books, papers, records and accounts are confidential or exempt from open and public records law pursuant to Federal or Florida law.

**SECTION 10. INSURANCE.** The TPO shall provide, at its expense, general liability and errors and omissions insurance for the TPO Governing Board. Insurance for TPO Staff is provided for in Section 5.5 above. The TPO shall provide, at its own expense, any additional insurance required by the COUNTY, as stated in any lease agreement between the TPO and the COUNTY.

**SECTION 11. INDEMNIFICATION.** The TPO shall indemnify and hold harmless the COUNTY and its agents and employees from and against all claims, damages, losses and liabilities, including attorney's fees, arising out of the TPO's services provided under this Agreement, to the extent of the liability of the TPO, where the claim, damage, loss, or liability is caused in whole or in part by the TPO or any of its subcontractors, agents or employees.

The COUNTY shall indemnify and hold harmless the TPO and its agents and employees from and against all claims, damages, losses and liabilities, including attorney's fees, arising out of the COUNTY's services provided under this Agreement to the extent of the liability of the COUNTY, where the claim, damages, or loss is caused in whole or in part by the COUNTY or its subcontractors, agents or employees.

The parties acknowledge specific consideration has been exchanged for this provision. Nothing herein is intended to be construed as a waiver of sovereign immunity applicable to each of the party pursuant to Florida Statute 768.28.

**SECTION 12. FEDERAL PARTICIPATION AND USE OF FEDERAL FUNDS.**

12.1 Federal Participation. It is understood and agreed by the parties that in order to permit TPO participation in the expenditure of Federal PL Funds this Agreement may be subject to the approval of FHWA and FDOT. The Parties agree no supplemental agreement of any nature may be entered into by the parties hereto with regard to the services to be performed hereunder involving the expenditure or use of Federal PL Funds without the approval of FHWA or as otherwise provided for in this section.

12.2 Use of Federal Funds. The TPO and the COUNTY agree that no Federal appropriated funds in connection with of this Agreement

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 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, grant, loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any non-federal funds have been paid or will be paid 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 shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying".

In accordance with 49 CFR 20.110 and 31 U.S.C. 1352, parties agree to file a certification and disclosure form upon award of federal contract, grant, or cooperative agreement exceeding One Hundred Thousand Dollars (\$100,000).

**SECTION 13. ASSET MANAGEMENT.** All equipment and supplies purchased by the TPO with Federal and/or state grant funds are the property of the TPO. The COUNTY shall have no authority over the TPO's inventory. The TPO shall adopt and implement an asset management program that will address the tracking and annual inventory of items required under state and Federal law. The COUNTY Asset Management Department currently has and shall maintain a separate Service Agreement with the Space Coast TPO to provide services for disposal of TPO equipment and supplies. The County's Asset Management disposal program will follow all appropriate Federal and State requirements applicable to the TPO for removal of TPO inventory.

**SECTION 14. CONTRACT MANAGEMENT AND LEGAL SERVICES.**

14.1 Contract Management. The TPO shall maintain all of its contracts. All contracts are approved by the TPO Governing Board and are not to be considered under the COUNTY's contract management system.

14.2 Legal Services. The TPO shall provide its own legal counsel and shall be responsible for compensating such legal counsel.

**SECTION 15. PROHIBITED INTERESTS.** Neither the TPO nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with this Agreement or any services included or planned to be performed pursuant to this Agreement, in which a member, officer, or employee of the TPO,

either during his or her tenure or for one (1) year thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to the TPO and such disclosure is entered in the minutes of the TPO, the TPO may waive the prohibition contained in this paragraph; provided, that any such present member, officer, or employee shall not participate in any action by the TPO or the locality relating to such contract, subcontract, or arrangement.

The TPO shall insert in all contracts entered into in connection with this Agreement or planned to be included in any TPO Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

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.

The provisions of this paragraph shall not be applicable to any agreement between the TPO and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

**SECTION 16. PUBLIC ENTITY CRIMES.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

**SECTION 17. UNAUTHORIZED ALIEN WORKERS.** The TPO will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. 1324a (Section 274a of the Immigration and Nationality Act "INA"). Upon a contractor's employment of unauthorized aliens, the COUNTY may immediately terminate this Agreement.

The COUNTY shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment of:

- a. All persons employed by the COUNTY during the term of this Interlocal Agreement to perform employment duties within Florida; and
- b. All persons, including contractors, assigned by the COUNTY to perform work pursuant to this Interlocal Agreement with the Space Coast TPO.

**SECTION 18. FEDERAL TAX ID NUMBER.** The COUNTY shall provide to the TPO its Federal Tax ID Number within ten (10) days of the effective date of this Agreement.

**SECTION 19. NONDISCRIMINATION.**

19.1 Compliance with Regulations. The TPO shall comply with the regulations of U.S. Department of Transportation ("USDOT") relative to non-discrimination in federally assisted programs of the USDOT, which are herein incorporated by reference and made a part of the Agreement.

19.2 Nondiscrimination. The TPO, with regard to the work performed by it after award and prior to completion of the contract work will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of contractors and subcontractors, including procurements of material and leases of equipment. The TPO 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.

The TPO will take such action with respect to any subcontract or procurement as the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event the TPO becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the TPO may request the State of Florida to enter into such litigation to protect the interests of the State, and, in addition, may request the United States to enter into such litigation to protect the interests of the United States.

As required by 49 CFR 26.13, the COUNTY is advised that the TPO shall not discriminate on the basis of race, color, national origin, religion, gender, age or disability in the award and performance of any DOT-assisted contract or in the administration of its Disadvantage Business Enterprise ("DBE") program or the requirements of 49 CFR Part 26. The TPO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

The TPO's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in the Planning Funds agreement between the TPO and the FDOT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the TPO's agreement with the FDOT. Upon notification to the TPO of its failure to carry out its approved program, the USDOT 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 Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

**SECTION 20. CONSTRUCTION OF AGREEMENT.** The parties to this Agreement hereby acknowledge that they have fully reviewed this Agreement, its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

**SECTION 21. GOVERNING LAWS.** This Agreement shall be governed, construed and interpreted under the laws of the State of Florida.

**SECTION 22. VENUE.** Venue for any action brought pursuant to this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, or if in Federal court in the U.S. District Court for the Middle District of Florida, Orlando Division. Any trial shall be non-jury.

**SECTION 23. ATTORNEYS' FEES.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorneys' and paralegals' fees and costs.

**SECTION 24. SEVERABILITY.** Should any section, sentence or clause of this Agreement be deemed unlawful by a Court of competent jurisdiction, no other provision hereof shall be affected and all other provisions of this Agreement shall continue in full force and effect.

**SECTION 25. ASSIGNMENT.** This Agreement and the services to be provided hereunder shall not be assigned, sub-contracted, or sublet by either party without the express written permission of the other party.

**SECTION 26. PRIOR INTERLOCAL AGREEMENT FOR SERVICES; MODIFICATIONS.**

a. This Agreement, together with any attachments and schedules constitutes the entire agreement between the TPO and the COUNTY and supersedes the Interlocal Agreement for Services recorded on September 20, 2010, recorded in Official Records Book 6244, Page 1262, Public Records of Brevard County, Florida, as amended by the

First Amendment to Interlocal Agreement for Services recorded on September 8, 2011, recorded in Official Records Book 6449, Page 2602, Public Records of Brevard County, Florida, as further amended by the Second Amendment to Interlocal Agreement for Services recorded on January 13, 2015, recorded in Official Records Book 7281, Page 2094, Public Records of Brevard County, Florida The Interlocal Agreement for Services recorded on September 20, 2010, recorded in Official Records Book 6244, Page 1262, Public Records of Brevard County, Florida, as amended by the First Amendment to Interlocal Agreement for Services recorded on September 8, 2011, recorded in Official Records Book 6449, Page 2602, Public Records of Brevard County, Florida, as further amended by the Second Amendment to Interlocal Agreement for Services recorded on January 13, 2015, recorded in Official Records Book 7281, Page 2094, Public Records of Brevard County, Florida, be and the same is terminated upon this Agreement becoming effective, which effective date is provided in Section 28. of this Agreement.

b. This Agreement and any attachments may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto and filed in the Office of the Clerk of Circuit Court of Brevard County, Florida.

**SECTION 27. NOTICE.** Notice under this Agreement shall be given prepaid or post paid by: (a) U.S. certified mail, return receipt requested; (b) recognized national overnight courier (*i.e.* USPS, Federal Express, United Parcel Service); or (c) hand delivery, addressed as follows:

To the TPO:  
Bob Kamm, TPO Executive Director  
Space Coast TPO  
2725 Judge Fran Jamieson Way  
Building B, Room 105  
Viera, FL 32940

With a copy to:  
Paul Gougelman, Esq. Counsel  
Weiss Serota Helfman, et al.  
200 East Broward Blvd.  
Suite 1900  
Ft. Lauderdale, FL 33301

To the COUNTY:  
Stockton Whitten, County Manager  
Brevard County  
2725 Judge Fran Jamieson Way  
Building C  
Viera, FL 32940

With a copy to:  
Scott Knox, County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way  
Building C, Suite 308  
Viera, FL 32940

The person or address may be changed by providing written notice to the other party. Notice shall be deemed to have been given upon receipt, if hand delivered, upon deposit with a recognized overnight courier, or within five (5) days after deposit in the U.S. certified

mail. If the last day for giving any notice falls on a Saturday, Sunday, or post office holiday, the time is extended to the next day that is not a Saturday, Sunday, or post office holiday.

**SECTION 28. EFFECTIVE DATE.** This Agreement shall become effective on October 1, 2015.

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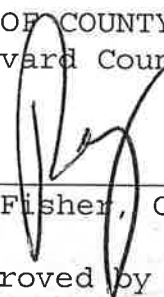
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IN WITNESS WHEREOF, the undersigned parties have approved this Agreement and directed the undersigned officials to execute on their behalf.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF Brevard County, FLORIDA

SPACE COAST TRANSPORTATION  
PLANNING ORGANIZATION (TPO)

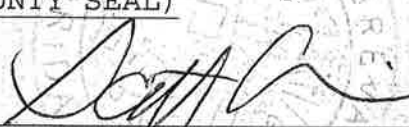
  
\_\_\_\_\_  
Robin Fisher, Chairman

\_\_\_\_\_  
Jerry Allender, Chairman

As Approved by the Board on:

As Approved by the Board on:

\_\_\_\_\_  
(COUNTY SEAL)

  
\_\_\_\_\_  
Scott Ellis, Clerk  
Review for legal form and  
content:  
\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Bob Kamm, Executive Director

**ATTACHMENT "A"**

TPO Professional Classification
TPO Executive Director
Operations Manager
Principal Transportation Planner
Transportation Program Specialist
Transportation Analyst
Bicycle/Pedestrian Education Specialist
Administration & Finance Clerk
Communications Specialist
Administrative Specialist

FIRST AMENDMENT TO  
LEASE AGREEMENT BY AND BETWEEN  
BREVARD COUNTY AND  
THE SPACE COAST TRANSPORTATION PLANNING ORGANIZATION

THIS LEASE AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Brevard County, Florida, a political subdivision of the State of Florida (hereinafter called the "COUNTY") and the Space Coast Transportation Planning Organization, a Metropolitan Planning Organization created and operating pursuant to Section 339.175, Florida Statutes (hereinafter called the "TPO").

**WITNESSETH**

WHEREAS, Section 339.175(1) Florida Statutes, provides for the designation of a metropolitan planning organization for each urbanized area of the state and the creation and operation of such metropolitan planning organizations pursuant to an interlocal agreement entered into pursuant to Sections 163.01 and 339.175, Florida Statutes; and

WHEREAS, the Governor of Florida has designated the TPO as the metropolitan planning organization for the Palm Bay/Melbourne/Titusville urbanized area, and the TPO is duly created and operates pursuant to an interlocal agreement between the Florida Department of Transportation and the affected units of general and special purpose local governments within the Palm Bay/Melbourne/Titusville urbanized area; and

WHEREAS, the aforesaid Restated Interlocal Agreement was recorded on July 15, 2014, in Official Records Book 7166, Page 2144, Public Records of Brevard County, Florida; and

WHEREAS, pursuant to Section 339.175(2)(b), Florida Statutes, the TPO is a legally independent governmental entity distinct from Brevard County, Florida, a political subdivision of the State of the Florida, and has the TPO has the authority to contract with the COUNTY for the provision of certain services; and

WHEREAS, Brevard County exists as a charter county of the State of Florida pursuant to Article VIII, Section 1(g), Florida Constitution of 1968; Sections 7.05 and 125.60 *et seq.*, Florida Statutes; and the Brevard County Charter of 1994; and

**WHEREAS**, the TPO currently leases space for its administrative offices from the COUNTY and is authorized by Sections 339.175(6) and 163.01, Florida Statutes, to contract with the COUNTY for same;

**WHEREAS**, pursuant to Section 125.01(1), Florida Statutes, the COUNTY has the authority to enter into said Agreement as hereinafter provided; and

**WHEREAS**, the parties desire to amend the existing lease.

**NOW, THEREFORE**, in consideration of the terms and provisions herein, the COUNTY hereby leases unto the TPO certain property as described herein:

1. Recitals; Confirmation of Existing Lease.

(a) Recitals. Each and all of the foregoing recitals is declared to be true and correct by the parties, and the aforesaid recitals are incorporated herein.

(b) Confirmation of Existing Lease. The lease between the TPO and Brevard County commencing October 1, 2010, and relating to office space, meetings rooms and parking at the Brevard County Viera government Complex, 2725 Judge Fran Jamieson Way, Melbourne, Florida 32940, be and the same is reconfirmed, and it is intended by the parties that said lease shall continue in full force and effect except as otherwise modified by the parties by this instrument. As used in this First Amendment to Lease Agreement By and Between Brevard County and the Space Coast Transportation Planning Organization, the term "lease" shall mean and refer to the original Lease Agreement By and Between Brevard County and the Space Coast Transportation Planning Organization which lease commenced on October 1, 2010, for office space, meeting rooms, parking, and other facilities at the Brevard County Viera Government Complex.

2. Amendment of Section 1. of the Lease. Section 1. of the Lease is hereby amended as follows. In interpreting this amendment, words underlined include new text, and words ~~stricken through~~ include text to be deleted from the Lease. Asterisks (\* \*) indicate text not amended but not displayed in this First Amendment to the Lease.

1. Definitions. Unless the context shall affirmatively indicate to the contrary, the following terms shall be defined as set forth in this Section.

\* \* \*

"Building" means and refers to the three ~~two~~ buildings in the Brevard County Government Complex as described in Section 2. of this Lease, including Building "B" in which the Office Space is located, and Buildings Building "A" and "C" in which the TPO meeting room facilities are located.

"Common Areas" means and refers to the all elevators, hallways, stairways, public bathrooms, common entrances, lobbies and other similar public areas and access ways in Buildings "A", "B" and "C," together with the Parking Area, the sidewalks and driveways.

\* \* \*

3. Amendment of Section 2. of the Lease. Section 2. of the Lease is hereby amended as follows. In interpreting this amendment, words underlined include new text, and words ~~stricken through~~ include text to be deleted from the Lease. Asterisks (\* \*) indicate text not amended but not displayed in this First Amendment to the Lease.

2. Use of the Premises. The Premises are to be used by TPO for professional and governmental business and for any other lawful purpose. The TPO shall also have the nonexclusive right in common with the COUNTY to make use of the County Commission Chambers on the first floor of Building "C", the Florida Room (a meeting room) on the third floor of Building "C", and the Space Coast Room (a meeting room) on the second floor of Building "C", the Atlantic Room (a meeting room) on the second floor of Building "C", the Magnolia Room (a meeting room) on the first floor of Building "B", and Natural Resources conference rooms (meeting rooms) on the second floor of Building "A", all for governmental meetings. Said right to use said meeting rooms shall be on a first come, first serve basis. Meeting rooms may be reserved for up to one year in advance. Pursuant to this Agreement, the County Commission Chambers, the Florida Room, and the Space Coast Room, the Atlantic Room, the Magnolia Room, and the Natural Resources Conference Rooms, may

all be used by the TPO without additional charge, fee, or cost.

4. Amendment of Section 3.(b) and (c) of the Lease. Section 3.(b) and (c) of the Lease is hereby amended as follows. In interpreting this amendment, words underlined include new text, and words ~~stricken through~~ include text to be deleted from the Lease. Asterisks (\* \* \*) indicate text not amended but not displayed in this First Amendment to the Lease.

3. Premises. The COUNTY hereby leases to the TPO, and the TPO hereby leases from the COUNTY, the Premises. The Premises include:

\* \* \*

(b) Common Areas. The nonexclusive right with others designated by the COUNTY to the free use of the Common Areas in any buildings in which the TPO's Office Space is located (currently Building B of the Viera Government Complex), or meeting space is located in Building C, Building A, and the Parking Areas on the Premises. Common Areas in any Building include all elevators, hallways, stairways, public restrooms, common entrances, lobbies and other similar public areas and access ways, together with sidewalks accessing said Building from the Parking Spaces and all driveways on the Premises. The TPO shall also have the nonexclusive right in common with the COUNTY to make use of the County Commission Chambers on the first floor of Building "C", the Florida Room (a meeting room) on the third floor of Building "C", and the Space Coast Room (a meeting room) on the second floor of Building "C", the Atlantic Room (a meeting room) on the second floor of Building "C", the Magnolia Room (a meeting room) on the first floor of Building "B", and the Natural Resources conference rooms (meeting rooms) on the second floor of Building "A", all for governmental meetings. Said right to use said meeting rooms shall be on a first come, first serve basis; provided, that the use of the Florida Room is reserved unto the TPO for four (4) hours on the second Thursday of each calendar month commencing at 9:00 a.m., except in the months of January, June and August of each calendar year.

(c) Office Space, Common Areas, and Premises Subject to Lease Agreement. The legal description of the Brevard County Government Center is set forth in Exhibit "A," said exhibit being attached hereto and by this reference incorporated herein. The location of the Buildings, including in particular Buildings "A", "B" and "C," in the Brevard County Government Center are also depicted on Exhibit "A." The location of the Office Space within Building "B," the Common Area within Building "B," and the Parking Areas are also depicted in Exhibit "A."

5. Amendment of Section 5. of the Lease. Section 5. of the Lease is hereby amended as follows. In interpreting this amendment, words underlined include new text, and words ~~stricken through~~ include text to be deleted from the Lease. Asterisks (\* \*) indicate text not amended but not displayed in this First Amendment to the Lease.

5. Term. The term of this Lease is five (5) years, and commenced beginning on October 1, 2010 (the "Commencement Date"), and extending to and including September 30, 2015 ~~with an option to renew the Lease for an additional five (5) year term.~~ The County has extended to the TPO two options to renew this Lease for a term of five (5) years for each option, which option may be exercised in the sole discretion of the TPO. The option may be exercised by a written letter from the TPO to the County with notice being given as provided in Section 22. of the Lease. Pursuant to the first option to renew the Lease, the Lease was renewed for an additional five (5) year term commencing on October 1, 2015 and terminating on September 30, 2020. The second option, if exercised by the TPO, would be from October 1, 2020, until September 30, 2025. The second option to renew must be exercised at least 90 ~~180~~ days prior to September 30, 2025 ~~2015~~.

6. Amendment of Section 6. of the Lease. Section 6. of the Lease is hereby amended as follows. In interpreting this amendment, words underlined include new text, and words ~~stricken through~~ include text to be deleted from the Lease. Asterisks (\* \*) indicate text not amended but not displayed in this First Amendment to the Lease.

6. Rental Payment. The County acknowledges that all rent due for the period October 1, 2010

through September 30, 2015, has been paid by the TPO to the County. The TPO shall pay to the COUNTY rent on an annual basis for each fiscal year of October 1<sup>st</sup> to September 30<sup>th</sup> (the "Lease Fiscal Year"), which shall always be paid in equal monthly installments, payable on the first day of each month in advance and payable through TPO accounts established within the county's financial system with payment to Brevard County Facilities Department, 2725 Judge Fran Jamieson Way, Melbourne, Florida, 32940. The Base Year Rent" (total twelve months rental rate for the Lease Fiscal Year) shall be \$15,268.00 ~~\$15,062.00~~ with the monthly rent payment for the period October 1, 2015 ~~2010~~ through September 30, 2016 ~~2011~~, being \$1,272.33 per month.

(a) Adjustment to Rent. Rent may be adjusted annually on October 1<sup>st</sup> of each year (the "Adjustment Date") of this Lease, beginning with October 1, 2011, and every one-year anniversary thereafter. The COUNTY shall advise the TPO of the dollar amount of rental increases or decreases at least ninety (90) days before the Adjustment Date of each lease fiscal year. Rental rate charges shall be based upon square footage of the Office Space and appropriate percentage of common area square footage for the Building in which the Office Space is located. The rental rate for the forthcoming Lease Fiscal Year shall be calculated based upon the Double Step-Down Methodology of the County's Cost Allocation Plan for Facilities Management, and utilize the application of OMB Circular A-87 as now engrossed in the Uniform Administrative Requirement, Cost Principles, and Audit Requirement for Federal Awards (also known as the Super Circular) codified at the 2 CFR Part 200 guidelines and full costing principles, as applicable. The Base Year Rent, as so adjusted on each Adjustment Date, beginning with the first day of each new Lease Fiscal Year and continuing on to the next Adjustment Date shall be the new and redefined Base Year Rent. In the event that the rent is to be increased on an Adjustment Date and no notice is provided to the TPO before July 3<sup>rd</sup> (the ninety (90) day period prior to October 1<sup>st</sup>), the annual rental rate shall remain at a rate not higher than the same rate as the Base Year Rent. The foregoing rental rate increase includes all increases in costs to the TPO for common area expenses,

utilities, maintenance, repairs, and similar types of charges, except as otherwise described herein.

\* \* \*

7. Amendment of Section 22. of the Lease. Section 22. of the Lease is hereby amended as follows. In interpreting this amendment, words underlined include new text, and words ~~stricken through~~ include text to be deleted from the Lease. Asterisks (\* \* \*) indicate text not amended but not displayed in this First Amendment to the Lease.

22. Notice. Notice under this Agreement shall be given prepaid or post paid by: (i) U.S. certified mail, return receipt requested; (ii) recognized national overnight courier (i.e. - Federal Express, United Parcel Service, U.S. Postal Service); or (iii) hand delivery, addressed as follows:

To the TPO:  
Bob Kamm, Staff Director  
Space Coast Transportation Planning Organization  
2725 Judge Fran Jamieson Way, Bldg. B, Rm 105  
Melbourne, FL 32940

With a copy to:  
Paul Gougelman, General Counsel  
Space Coast Transportation Planning Organization  
c/o Weiss Serota Helfman Cole & Bierman  
200 East Broward Blvd. - Suite 1900  
Ft. Lauderdale, FL 33301  
~~e/o City Attorney's Office - 5<sup>th</sup> floor~~  
~~City of Melbourne~~  
~~900 East Strawbridge Avenue~~  
~~Melbourne, FL 32901~~

To the County:  
Facilities Director  
Brevard County  
2725 Judge Fran Jamieson Way  
Melbourne, FL 32940

With a copy to:  
County Attorney  
Brevard County  
2725 Judge Fran Jamieson Way  
Melbourne, FL 32940

The person or address to which any notice, demand or other writing may be given, made or sent, as above provided, may be unilaterally changed by written notice given by such party by giving notice to the other party hereto.

Notice shall be deemed to have been given upon receipt, if properly addressed and hand delivered, upon deposit with a recognized overnight courier, or within five (5) days after deposit in the U.S. mail. If the last day for giving any notice falls on a Saturday, Sunday, or post office holiday, the time is extended to the next day that is not a Saturday, Sunday, or post office holiday.

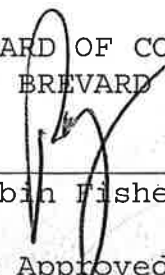
8. Construction of Agreement. The parties to this First Amendment to Lease Agreement hereby acknowledge that they have fully reviewed this Agreement and have had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

9. Effective Date of This First Amendment To Lease. This First Amendment to the Lease shall be effective October 1, 2015.

IN WITNESS WHEREOF, the undersigned parties have approved this instrument and directed the undersigned officials to execute on their behalf.

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

SPACE COAST TRANSPORTATION  
PLANNING ORGANIZATION (TPO)


  
\_\_\_\_\_  
Robin Fisher, Chairman

\_\_\_\_\_  
Jerry Allender, Chairman

As Approved by the Board on:

As Approved by the TPO  
Governing Board on:

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
Bob Kamm, Executive Director

Review for legal form and content:

\_\_\_\_\_  
Assistant County Attorney

**Lewis, Sally A**

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**From:** Maki-Holden, Carol  
**Sent:** Tuesday, August 25, 2015 1:36 PM  
**To:** Lewis, Sally A  
**Subject:** FW: Revised BOCC agenda sheet  
**Attachments:** Draft 2015 Interlocal Agreement with BOCC pg 1c (2).doc; Draft 2015 First Amendment to Lease Agreement revised by pg.doc; County Attorney approval for 2015 Interlocal and Lease Amendment .pdf; Agenda Item Sheet for 2015 Interlocal Agreement and First Amendment to Lease Agreement.pdf

Hi Sally,

I know you are probably very busy, but I would just like to confirm that you received the revised agenda item sheet with the word change from 'lease' to 'agreement'.

Thanks!

Carol Holden  
Space Coast TPO

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**From:** Maki-Holden, Carol  
**Sent:** Friday, August 21, 2015 2:15 PM  
**To:** Lewis, Sally A  
**Subject:** Revised BOCC agenda sheet

Sally,

I just noticed a minor error in the BOCC agenda item sheet I sent you previously. Attached is the revised one along with the same backup documents that were sent earlier. The only thing that changed on the BOCC agenda item sheet is in the second sentence. I changed the word "lease" to "Agreement".

Please contact me with any questions.

Thanks!

Carol Holden  
Space Coast TPO

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**From:** Maki-Holden, Carol  
**Sent:** Wednesday, August 12, 2015 9:04 AM  
**To:** Lewis, Sally A  
**Subject:** Items for the BOCC September 1, 2015 consent agenda

Hi Sally,

Attached are the Interlocal Agreement and 1<sup>st</sup> Amendment to the Lease Agreement that I discussed with you earlier. They were both approved by the County Attorney yesterday. We would like them to be considered under consent at the September 1, 2015 BOCC meeting.

Please let me know if I need to provide anything else.

Thank you for your help!

Carol Holden  
Administrative Assistant  
Space Coast Transportation Planning Organization  
2725 Judge Fran Jamieson Way, Bldg. B  
Melbourne, FL 32940  
321-690-6890

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*Roads to Rockets...The Sky is NOT the Limit*