



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.9

9/15/2020

Subject:

Approval Re: Interlocal Agreement with the Space Coast Transportation Planning Organization - Countywide

Fiscal Impact:

\$60,000 annual payment to the Space Coast Transportation Planning Organization is available in Local Option Gas Tax funds.

Dept/Office:

Public Works/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the County Manager to execute the Interlocal Agreement with the Space Coast Transportation Planning Organization. It is further requested the County Manager approve any Budget Change Requests associated with this action.

Summary Explanation and Background:

The Space Coast Transportation Planning Organization (T.P.O.) is the designated metropolitan planning organization for the Palm Bay-Melbourne and Titusville urbanized area. The TPO is desirous of obtaining certain services from the County to assist the T.P.O. staff in managing the continuing, cooperative and comprehensive transportation planning process as mandated by State and Federal law. The County is desirous of obtaining certain transportation planning services from the T.P.O. to assist the County in managing its comprehensive transportation planning process.

The purpose of this Interlocal Agreement is to define the services to be provided by T.P.O. and the County and to establish the appropriate compensation, as agreed to by the parties. The County agrees to compensate the T.P.O. \$60,000 annually for the services, as described in the Interlocal Agreement. The annual rate will be transferred to the T.P.O. as a lump sum payment in two installments of \$30,000 each.

The term of this Agreement will become effective on October 1, 2020, or upon its filing with the Clerk of the Circuit Court of Brevard County, whichever date occurs second in time, and shall extend to and include September 30, 2025. The T.P.O. will have an option to renew this Agreement for an additional five-year term until September 30, 2030. The T.P.O. must provide written notice to the County by July 1, 2025 of its intent to renew this Agreement for an additional five-year term. The Interlocal Agreement, recorded on September 20, 2010, and as amended, will be terminated upon this Agreement becoming effective. The T.P.O. Board will consider this Interlocal Agreement for approval at their September 10, 2020 meeting.

The County will continue to provide the T.P.O. with office space suitable to conduct the T.P.O.'s business, subject to the terms and conditions of a separate lease agreement between the County and the T.P.O.

Pursuant to the Written Notice of Contract Renewal (Second Renewal), the Lease Agreement previously entered into by and between the County and the T.P.O. was renewed on July 21, 2020 for an additional period of five years, from October 1, 2020 until September 30, 2025.

Clerk to the Board Instructions:

Please return the fully executed Interlocal Agreement to the Public Works Department for filing with the Clerk of the Circuit Court of Brevard County by the T.P.O.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Space Coast Transportation Planning Organization (TPO)		2. Amount: \$60,000 annually
3. Fund/Account #: Local Option Gas Tax	4. Department Name: Public Works	
5. Contract Description: Interlocal Agreement with TPO		
6. Contract Monitor: Jeanette Scott	8. Contract Type: INTERGOVT/LOCAL	
7. Dept/Office Director: Marc Bernath, Public Works Director		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	☒	☐	
Purchasing	☐	☐	
Risk Management	☐	☐	
County Attorney	☐	☐	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	☒	☐	Thomas-Wood, Tammy
Purchasing	☐	☐	
Risk Management	☒	☐	Lairsey, Matt
County Attorney	☒	☐	<i>Eden Berkley</i> 09/02/2020

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	☐
Department	☐
Program	☐
Contact Name	☐
Cost Center, Fund, and G/L Account	☐
Vendor Information (SAP Vendor #)	☐
Contract Status, Title, Type, and Amount	☐
Storage Location (SAP)	☐
Contract Approval Date, Effective Date, and Expiration Date	☐
Contract Absolute End Date (No Additional Renewals/Extensions)	☐
Material Group	☐
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	☐
"Right To Audit" Clause Included in Contract	☐
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	☐



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

September 16, 2020

M E M O R A N D U M

TO: Marc Bernath, Public Works Director Attention: Lucy Hamelers

RE: Item F.9., Approval for Interlocal Agreement with the Space Coast Transportation Planning Organization - Countywide

The Board of County Commissioners, in regular session on September 15, 2020, approved and authorized the County Manager to execute the Interlocal Agreement with the Space Coast Transportation Planning Organization; and approved any Budget Change Requests associated. Enclosed are two executed Interlocal Agreements.

Upon execution by TPO, please return the fully-executed Interlocal Agreement to this office for inclusion in the official record.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

/sm

Encls. (2)

cc: County Manager
Contracts Administration
Finance
Budget



BOARD OF COUNTY COMMISSIONERS

County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

TO: Kimberly Powell, Clerk to the Board
FROM: Jessica Bayne, County Attorney's Office 
DATE: September 29, 2020
RE: Interlocal Agreement between Brevard County and Space Coast
Transportation Planning Organization

Please find enclosed the original Interlocal Agreement between Brevard County and Space Coast Transportation Planning Organization for inclusion in the official record.

If you have any questions, please feel free to contact this office. Thank you.

THIS INSTRUMENT RETURN TO:
Eden Bentley, County Attorney
Building "C" - 3rd Floor
Brevard County Government Center
2725 Judge Fran Jamieson Way
Viera, FL 32940

CFN 2020212252, OR BK 8869 PAGE 1005,
Recorded 09/29/2020 at 09:24 AM, Scott Ellis, Clerk of
Courts, Brevard County
Pgs:28

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

THIS INTERLOCAL AGREEMENT, made and entered into this 15th day of September 2020, 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, 2020, and shall extend to and include September 30, 2025. The TPO shall have an option to renew this Agreement for an additional five (5) year term until September 30, 2030. The TPO must provide written notice to the County by July 1, 2025 of its intent to renew this Agreement for an additional five (5) year term terminating on September 30, 2030.

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. Closed captioning of said meetings provided by SCGTV shall be paid by 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 materials.

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 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 1st 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. 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.
- k. 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.

- l. 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.
- m. 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.
- n. 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.
- o. 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.
- p. 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 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 1st 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 are members of 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 1st 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 or Executive Director in accordance with TPO policies. 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 an annual rate of \$60,000.00. The annual rate shall be transferred to the TPO as a lump sum payment in two (2) installments of thirty thousand each (\$30,000). Payment is

anticipated to be received by April 15 and September 30 of each year that this Agreement is in effect.

- b. The TPO shall track all services and support activities provided for the County and prepare and submit a bi-annual report with a lump sum invoice to the COUNTY. The COUNTY shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes section 218.70, et seq. The annual work effort shall not exceed Sixty Thousand Dollars (\$60,000).
- 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), for the COUNTY's Fiscal Year October 1, 2020 through September 30, 2021, without prior approval by the TPO Executive Director. For all Fiscal Years commencing after September 30, 2021, 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).
- d. In the event that these funds are 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 may only use the COUNTY's exemption number in securing such materials or services such as travel reservations, office supplies which are procured using the COUNTY'S vendor and procurement of materials through use of VISA credit cards, which are assigned to TPO staff through the COUNTY Purchasing Department. The TPO agrees to adhere to COUNTY policies when utilizing the VISA credit cards.

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.

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 provide a lump sum invoice and summary of services report performed by the TPO on a bi-annual basis, or other mutually agreed upon schedule.

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 time period covered by the invoice;
- b. A concise, meaningful description of the services rendered, with sufficient detail to enable the COUNTY to evaluate the services rendered; and

- c. 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 TPO shall be responsible for providing any local match requirements for the FTA grants (currently approximately \$24,000 per year) utilizing the annual lump sum allocation received from the COUNTY. 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, if required, shall be budgeted by the TPO through use of the COUNTY's SAP financial program. The TPO shall be responsible for posting received revenue's from the County to the proper accounts when local match is required.

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 TPO shall utilize part of the lump sum funds received from the COUNTY for support services that the TPO Staff provides to the COUNTY as outlined in Section 4, subsections (c) and (d) above. Effective October 1, 2020, the COUNTY agrees to remove the collection of concurrency review fees as part of residential and commercial permit fees collected for the TPO, as originally approved and adopted by the Board of County Commissioners on November 18, 2003, Resolution No. 03-283.

7.9 Cashier Collection Services. The COUNTY shall provide to the TPO, collection and deposit of TPO revenue's without charge, as long as the number of collections does not exceed fifteen (15) transactions per fiscal year. If more than 15 transactions are made by the TPO in a fiscal year, the TPO shall then reimburse the COUNTY a \$5.00 administration fee per transaction above the 15, as long as the deposited amount exceeds \$100.00. Deposits less than \$100.00 shall be exempt from any administrative or transaction fees.

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 five (5) 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. 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 hereby terminated upon this Agreement becoming effective, which effective date is provided in Section 42. 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:

Georganna Gillette,
TPO Executive Director
2725 Judge Fran Jamieson Way
Building B, Room 105
Viera, FL 32940

With a copy to:

Paul Gougelman, Esq.
Counsel Space Coast TPO
Weiss Serota Helfman, et al.
200 East Broward Blvd.
Suite 1900
Ft. Lauderdale, FL 33301

To the COUNTY:

Frank Abbate, County Manager
Brevard County
2725 Judge Fran Jamieson Way
Building C
Viera, FL 32940

With a copy to:

Eden Bentley, 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 unilaterally 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. NO GOVERNMENT OBLIGATION TO THIRD PARTIES. The COUNTY agrees, absent express written consent of the Federal Government, that the Federal Government is not a party to the contract and shall not be subject to any obligations or liabilities to any third party contractor, or any sub-recipient, or any other party pertaining to any matter resulting from this contract or purchase order. The COUNTY agrees to include a similar provision in each subcontract financed in whole or in part with federal assistance provided by the U.S. Department of Transportation, or an agency thereof.

SECTION 29. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT. The COUNTY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, et seq., and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with this Agreement. Upon execution of this Agreement, the COUNTY certifies and affirms the truthfulness and accuracy of any statement it has made, causes to be made, makes, or may make pertaining to the Agreement or the underlying FHWA or FTA assisted project for which this Agreement or Work Order is being performed. In addition to other penalties that may apply, the COUNTY acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on it to the extent the Federal Government may deem appropriate. The COUNTY also acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with federal assistance authorized for 49 USC §5307, the Federal Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n) (1), to the extent the Federal Government deems appropriate. The COUNTY agrees to include the above stated provisions in each subcontract financed in whole or in part with federal assistance provided by the U.S. Department of Transportation. The COUNTY shall not modify the above stated provisions except to identify the subcontractor who will be subject to the provision.

SECTION 30. FEDERAL CHANGES. The COUNTY shall at all times comply with all applicable FHWA and FTA regulations, policies, procedures,

and directives, as they may be promulgated or amended from time to time during the term of this contract. The COUNTY's failure to so comply shall constitute a material breach of this Agreement. The COUNTY agrees to include the above stated provision in each subcontract financed in whole or in part with federal assistance provided by the FHWA or FTA.

SECTION 31. INCORPORATION OF FEDERALTRANSIT ADMINISTRATION ("FTA")

TERMS. This Agreement shall be deemed to include and does hereby incorporate by reference all standard terms and conditions required by the U.S. DOT and FTA, regardless of whether expressly set forth in this Agreement and include, but are not limited to, all of the duties, obligations, terms and conditions applicable to the Work as described in FTA Circular 4220.1F, and applicable federal law. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with any other provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requirement which would cause the TPA to be in violation of its Joint Planning Administration or any FTA terms and conditions applicable to this Project. CONSULTANT agrees to include the above stated provision in each subcontract financed in whole or in part with FTA assisted funding.

SECTION 32. CIVIL RIGHTS. The following requirements apply to this Agreement:

a. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102, section 202 of the Americans with Disabilities Act of 1990, as amended, 42 USC §12132, and Federal transit law at 49 USC §5332, as each may be amended from time to time, the COUNTY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the COUNTY agrees to comply with all applicable federal implementing regulations and any other implementing requirements that FHWA or the FTA may issue.

b. Equal Employment Opportunity:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and Federal transit laws at 49 USC §5332, the COUNTY agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment

Opportunity, Department of Labor," 41 CFR Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any other applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The COUNTY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

In addition, the COUNTY agrees to comply with any implementing requirements that FHWA or the FTA may issue.

(2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623 and federal transit law at 49 USC §5332, the COUNTY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the COUNTY agrees to comply with any implementing requirements FHWA or the FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, the COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the COUNTY agrees to comply with any implementing requirements that the FHWA or the FTA may issue.

(4) The COUNTY also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the FHWA or the FTA, modified only to identify the affected parties.

SECTION 33. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION. If this Agreement has a value of \$25,000 or more, this procurement is a

covered transaction for purposes of 49 CFR Part 29. As such, the COUNTY is required to verify that neither it nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945 and does so hereby certify. The COUNTY agrees to comply with and does hereby assure and certify the compliance of each third-party contractor and sub-recipient at any tier, with 49 CFR 29, Subpart C, while its proposal, offer or bid is pending and throughout the period that any agreement arising out of such offer, proposal or bid is in effect. The COUNTY further agrees to include a provision requiring such compliance in its subcontracts or any lower tier covered transaction it enters into.

SECTION 34. CLEAN AIR. The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The COUNTY agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, et seq. The COUNTY agrees to report each violation to the TPO and agrees that the TPO will, in turn, report each violation as required to assure notification to the FHWA and the FTA and the appropriate EPA regional office. The COUNTY further agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by the FHWA or the FTA.

SECTION 35. CLEAN WATER. If this Agreement is valued at \$100,000 or more, the COUNTY agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The COUNTY agrees to report each violation to the TPA and agrees that the TPA will, in turn, report each violation as required to assure notification to the FHWA or the FTA and the appropriate EPA regional office. The COUNTY also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by the FHWA or the FTA.

SECTION 36. ENERGY CONSERVATION. The COUNTY agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

SECTION 37. SEAT BELTS. The COUNTY is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate COUNTY-owned, rented or personally operated vehicles, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging, and to address each in every sub-

agreement it enters into related to this Agreement. Specifically, the COUNTY is encouraged to comply with: (a) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note; (b) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (c) U.S. DOT provisions pertaining to Distracted Driving as set forth in said orders.

SECTION 38. INSPECTION, REVIEW, APPROVAL, AND AUDIT.

- a. It is understood and agreed that all rights of the U.S. and Florida Departments of Transportation relating to inspection, review, approval, and audit of the work, tracings, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- b. Pursuant to Section 20.055(5), Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. The COUNTY and each sub-contractor under this Agreement understands and will comply with this subsection.

SECTION 39. FEDERAL PARTICIPATION. It is understood and agreed that, in order to permit federal participation in the expenditure of PL Funds, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of FHWA or as otherwise provided for in this Agreement.

SECTION 40. COMPLIANCE WITH REGULATIONS. The TPO shall comply with the regulations of the U.S. Department of Transportation relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation, which are herein incorporated by reference and made a part of the contract.

SECTION 41. CONFLICT OF INTEREST. No member, officer, or employee of the TPO either during his or her tenure or for one 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.

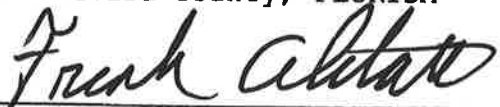
As provided by 23 CFR Sec. 1.33, no official or employee of a state or any other governmental instrumentality who is authorized in his

official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with this project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a state or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the state highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the state.

SECTION 42. EFFECTIVE DATE. This Agreement shall become effective on October 1, 2020, or upon its filing with the Clerk of the Circuit Court of Brevard County, Florida, whichever event or date shall occur second in time.

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

BOARD OF COUNTY COMMISSIONERS
OF Brevard County, FLORIDA


Frank Abbate, County Manager

As Approved by the Board on:

September 15, 2020

(COUNTY SEAL)

ATTEST:

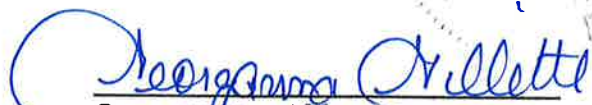

Scott Ellis, Clerk

SPACE COAST TRANSPORTATION
PLANNING ORGANIZATION (TPO)


Kathy Meenan, Chair

As Approved by the Board on:

September 10, 2020


Georganna Gillette,
Executive Director

Review for legal form and
content: *[Signature]*
County Attorney