

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date:	April 1, 2008	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
		<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public Hearing

Department: Metropolitan Planning Organization

Submitted By: Metropolitan Planning Organization

Submitted For: Metropolitan Planning Organization

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I. EXECUTIVE BRIEF

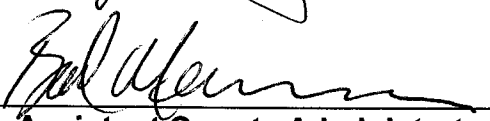
Motion and Title: Staff recommends motion to approve: Joint Participation Agreement with the Palm Beach Metropolitan Planning Organization for Intergovernmental Coordination and Review and Public Transportation Coordination.

Summary: The Joint Participation Agreement provides for coordination of Metropolitan Planning Organization (MPO) planning activities with the regional planning council and major transportation service providers. The Florida Department of Transportation (FDOT) provides a standard agreement, which is updated periodically to reflect new Federal transportation acts and changes to State Statutes. The County last entered into this agreement with the Metropolitan Planning Organization in July 1999 prior to the passage of SAFETEA-LU. (Metropolitan Planning Organization) Countywide (DR)

Background and Justification: The Federal Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU) and its predecessors require coordination of transportation plans and programs in urban areas. These requirements are also contained in Florida Statutes governing transportation planning carried out by the Metropolitan Planning Organization. The MPO is required to coordinate its planning activities with the Treasure Coast Regional Planning Council for land use and with transportation service providers relative to transportation of people and goods. These providers include the Port of Palm Beach, South Florida Regional Transportation Authority and the Palm Beach County Commission representing Palm Tran and the Department of Airports. FDOT is also a party to the Agreement.

Attachments: Agreement

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Recommended by:	 _____ Department Director	<u>2-12-08</u> _____ Date
Approved By:	 _____ Assistant County Administrator	<u>2/28/08</u> _____ Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years 20____ 20____ 20____ 20____ 20____

Capital
Expenditures
Operating Costs

External Revenues
Program Income (County)
In-Kind Match (County)

NET FISCAL IMPACT None

No. ADDITIONAL FTE
POSITIONS (Cumulative) None

Is Item Included In Current Budget? Yes ____ No X__

Budget Account No.: Fund _____ Department _____ Unit _____

Object _____ Reporting Category _____

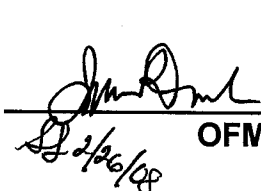
B. Recommended Sources of Funds/Summary of Fiscal Impact: None

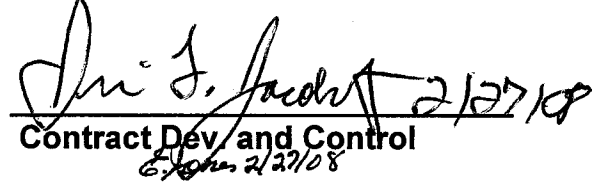
C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

There is no fiscal impact with this item.

 2-26-08
OFMB 2/14/08

 2/27/08
Contract Dev. and Control 2/27/08

B. Legal Sufficiency:

This Contract complies with our
contract review requirements.

 2/28/08
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not be used as a basis for payment.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**INTERGOVERNMENTAL COORDINATION AND REVIEW
AND
PUBLIC TRANSPORTATION COORDINATION
JOINT PARTICIPATION AGREEMENT**

THIS JOINT PARTICIPATION AGREEMENT is made and entered into this _____ day of _____, 2007 by and between the FLORIDA DEPARTMENT OF TRANSPORTATION; the PALM BEACH METROPOLITAN PLANNING ORGANIZATION ; the TREASURE COAST REGIONAL PLANNING COUNCIL; the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY; the PORT OF PALM BEACH; and PALM BEACH COUNTY.

RECITALS

WHEREAS, the Federal Government, under the authority of 23 U. S. C. and any subsequent applicable amendments requires each metropolitan area, as a condition to the receipt of federal capital or operating assistance, to have a continuing, cooperative, and comprehensive transportation planning process in designated metropolitan areas to develop and implement plans and programs consistent with the comprehensively planned development of the metropolitan area;

WHEREAS, 23 U. S. C. 134 (a) and (b), and Section 339.175, Florida Statutes, provide for the creation of metropolitan planning organizations to develop transportation plans and programs for metropolitan areas;

WHEREAS, the aforementioned federal laws require that the State, the Metropolitan Planning Organization, and the operators of publicly owned transportation systems shall enter into an agreement clearly identifying the responsibilities for cooperatively carrying out such transportation planning (including corridor and subarea studies pursuant to 23 Code of Federal Regulation 450.316 and 450.318) and programming;

WHEREAS, pursuant to Section 20.23, Florida Statutes, the Department has been created by the State of Florida, and the Department has the powers and duties relating to transportation, all as outlined in Section 334.044, Florida Statutes;

WHEREAS, pursuant to 23 United States Code 134, 49 United States Code 5303, 23 Code of Federal Regulations 450.306, and Section 339.175, Florida Statutes, the Palm Beach Metropolitan Planning Organization has been designated and its membership apportioned by the Governor of the State of Florida, with the agreement of the affected units of general purpose local government, to organize and establish the Metropolitan Planning Organization;

WHEREAS, pursuant to an interlocal agreement executed on October 13, 2004, and filed with the Clerk of the Circuit Court of Palm Beach County, the PALM BEACH METROPOLITAN PLANNING ORGANIZATION was established;

WHEREAS, pursuant to Chapter 74-570, Laws of Florida, the PORT OF PALM BEACH DISTRICT was created and established with the purpose of promoting and developing the facilities and services of the Port of Palm Beach ;

WHEREAS, pursuant to Chapter 343.51, Laws of Florida, the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY was created and established to own, operate, maintain, and manage a transit system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties;

WHEREAS, PALM BEACH COUNTY created and established a Department of Airports with the purpose of operating and managing the Palm Beach International Airport and three (3) general aviation airports located within Palm Beach County;

WHEREAS, PALM BEACH COUNTY created and established Palm Tran with the purpose of operating and managing its public transportation system;

WHEREAS, pursuant to Section 339.175(9)(a)2., Florida Statutes, the Metropolitan Planning Organization shall execute and maintain an agreement with the metropolitan and regional intergovernmental coordination and review agencies serving the Metropolitan Area;

WHEREAS, the aforesaid agreement must describe the means by which activities will be coordinated and specify how transportation planning and programming will be part of the comprehensively planned development of the Metropolitan Area;

WHEREAS, pursuant to Section 186.504, Florida Statutes, and Rule 27E-1.002, Florida Administrative Code, the TREASURE COAST REGIONAL PLANNING COUNCIL was established and operates with a primary purpose of intergovernmental coordination and review;

WHEREAS, pursuant to Section 186.505(24), Florida Statutes, the TREASURE COAST REGIONAL PLANNING COUNCIL is to review plans of metropolitan planning organizations to identify inconsistencies between those agencies' plans and applicable local government comprehensive plans adopted pursuant to Chapter 163, Florida Statutes;

WHEREAS, the Regional Planning Council, pursuant to Section 186.507, Florida Statutes, is required to prepare a Strategic Regional Policy Plan, which will contain regional goals and policies that address regional transportation issues;

WHEREAS, based on the Regional Planning Council's statutory mandate to identify inconsistencies between plans of metropolitan planning organizations and applicable local government comprehensive plans, and to prepare and adopt a Strategic Regional Policy Plan, the Regional Planning Council is appropriately situated to assist in the intergovernmental coordination of the intermodal transportation planning process;

WHEREAS, pursuant to Section 186.509, Florida Statutes, and Rule 29 K-4, Florida Administrative Code, the Regional Planning Council has adopted a conflict and dispute resolution process;

WHEREAS, the purpose of the dispute resolution process is to reconcile differences in planning and growth management issues between local governments, regional agencies, and private interests;

WHEREAS, the parties hereto have determined that the voluntary dispute resolution process is useful in

the process of resolving conflicts and disputes arising in the transportation planning process;

WHEREAS, pursuant to 23 Code of Federal Regulations 450.310(b) and Section 339.175(9)(a)3., Florida Statutes, the Metropolitan Planning Organization must execute and maintain an agreement with the operators of public transportation systems, including transit systems, commuter rail systems, airports, and seaports, describing the means by which activities will be coordinated and specifying how public transit, commuter rail, aviation, and seaport planning (including corridor and subarea studies pursuant to 23 Code of Federal Regulations 450.316 and 450.318) and programming will be part of the comprehensively planned development of the Metropolitan Area;

WHEREAS, it is in the public interest that the MPO, operators of public transportation systems, including transit systems, commuter rail systems, port and aviation authorities, jointly pledge their intention to cooperatively participate in the planning and programming of transportation improvements within this Metropolitan Area;

WHEREAS, the undersigned parties have determined that this Agreement satisfies the requirements of and is consistent with 23 Code of Federal Regulations 450.306 and Section 339.175(9)(a), Florida Statutes; and

WHEREAS, the parties to this Agreement desire to participate cooperatively in the performance, on a continuing basis, of a coordinated, comprehensive transportation planning process to assure that highway facilities, mass transit, rail systems, air transportation and other facilities will be properly located and developed in relation to the overall plan of community development.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties desiring to be legally bound, do agree as follows:

ARTICLE 1 RECITALS; DEFINITIONS

Section 1.01. Recitals. Each and all of the foregoing recitals be and the same hereby incorporated herein and acknowledged to be true and correct. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement.

Section 1.02. Definitions. The following words when used in this Agreement (unless the context shall clearly indicate the contrary) shall have the following meanings:

Agreement means and refers to this instrument, as amended from time to time.

Corridor or Subarea Study shall mean and refer to studies involving major investment decisions or as other identified in 23 Code of Federal Regulations 450.316 and 450.318.

Department shall mean and refer to the Florida Department of Transportation, an agency of the State of Florida, created pursuant to Section 20.23, Florida Statutes.

FHWA means and refers to the Federal Highway Administration.

Long Range Transportation Plan is at a minimum a 20-year plan which: identifies transportation facilities; includes a financial plan that demonstrates how the plan can be implemented and assesses capital improvements necessary to preserve the existing metropolitan transportation system and make efficient use of existing transportation facilities; indicates proposed transportation enhancement activities; and, in ozone/carbon monoxide nonattainment areas, is coordinated with the State Implementation Plan, all as required by 23 United States Code 134(g), 23 Code of Federal Regulations 450.322, Section 339.175(6), Florida Statutes.

Metropolitan Area means and refers to the planning area as determined by agreement between the Palm Beach Metropolitan Planning Organization and the Governor in the urbanized areas designated by the United States Bureau of the Census as described in 23 United States Code 134(b)(1) and Section 339.175, Florida Statutes, which shall be subject to the Metropolitan Planning Organization's planning authority.

MPO means and refers to the metropolitan planning organization formed pursuant to Interlocal Agreement dated October 13, 2004 as amended or superseded from time to time.

Regional Planning Council means and refers to the TREASURE COAST REGIONAL PLANNING COUNCIL created pursuant to Section 186.504, Florida Statutes, and identified in Rule 27E-1, Florida Administrative Code.

Transportation Improvement Program (TIP) is the staged multi-year program of transportation improvement projects developed by a metropolitan planning organization consistent with the Long-Range Transportation Plan and developed pursuant to title 23 United States Code 134(h), 49 United States Code 5304, 23 Code of Federal Regulations 450.324 and Section 339.175, Florida Statutes.

Unified Planning Work Program is the annual program developed in cooperation with the Department and public transportation providers, that lists all planning tasks to be undertaken during a program year, with a complete description thereof and an estimated budget, all as required by 23 Code of Federal Regulations 420 and 450.314, and Section 339.175(8), Florida Statutes.

ARTICLE 2 PURPOSE

Section 2.01. Coordination with public transit operators. As set forth in Article 3 of this Agreement, the purpose of this Agreement is to provide for cooperation with the Department, the Port of Palm Beach, Palm Beach County and the South Florida Regional Transportation Authority in the development and preparation of the Unified Planning Work Program, the Transportation Improvement Program, the Long-Range Transportation Plan, and any applicable Corridor or Subarea Studies.

Section 2.02. Intergovernmental coordination; Regional Planning Council. As set forth in Article 4 of this Agreement, the purpose of this Agreement is to provide a process through the Regional Planning Council for intergovernmental coordination and review and identification of inconsistencies between proposed Metropolitan Planning Organization transportation plans and local government comprehensive plans adopted pursuant to Chapter 163, Florida Statutes, and approved by the Florida Department of Community Affairs.

Section 2.03. Dispute resolution. As set forth in Article 5 of this Agreement, the purpose of this Agreement is to provide a process for conflict and dispute resolution through the Regional Planning Council.

ARTICLE 3

COOPERATIVE PROCEDURES FOR PLANNING AND PROGRAMMING WITH OPERATORS OF PUBLIC TRANSPORTATION SYSTEMS

Section 3.01. Cooperation with operators of public transportation systems; coordination with local government approved comprehensive plans.

(a) The Metropolitan Planning Organization shall cooperate with the Port of Palm Beach, Palm Beach County and the South Florida Regional Transportation Authority to optimize the planning and programming of an integrated and balanced intermodal transportation system for the Metropolitan Area.

(b) The Metropolitan Planning Organization shall implement a continuing, cooperative, and comprehensive transportation planning process that is consistent, to the maximum extent feasible, with port and aviation master plans, and public transit development plans of the units of local governments whose boundaries are within the Metropolitan Area.

(c) As a means towards achievement of the goals in paragraphs (a) and (b) and in an effort to coordinate intermodal transportation planning and programming, the Metropolitan Planning Organization may include as part of its membership, officials of agencies that administer or operate major modes or systems of transportation, including but not limited to transit operators, sponsors of major local airports, maritime ports, and rail operators. The representative of the major modes or systems of transportation may be accorded voting or non-voting advisor status. In the Metropolitan Area if authorities or agencies have been or may be created by law to perform transportation functions and that are not under the jurisdiction of a general purpose local government represented on the Metropolitan Planning Organization, the Metropolitan Planning Organization shall request the Governor to designate said authority or agency as a voting member of the MPO. If the new member would alter local government representation in the Metropolitan Planning Organization, the Metropolitan Planning Organization shall purpose a revised apportionment plan to the Governor to ensure voting membership on the Metropolitan Planning to an elected official representing public transit authorities which have been, or may be, created by law.

(d) The Metropolitan Planning Organization shall ensure that representatives of ports, transit authorities, and airports within the Metropolitan Area are provided membership on the Metropolitan Planning Organization's Technical Advisory Committee.

Section 3.02. Preparation of transportation related plans.

(a) Although the adoption or approval of the Unified Planning Work Program, the Transportation Improvement Program, and the Long-Range Transportation Plan is the responsibility of the Palm Beach Metropolitan Planning Organization, development of such plans or programs shall be viewed as a cooperative effort involving the Department, the Port of Palm Beach, Palm Beach County and the South Florida Regional Transportation Authority. In developing its plans and programs, the Palm Beach Metropolitan Planning

Organization shall solicit the comments and recommendations of the parties to this Agreement in the preparation of such plans and programs.

(b) At the commencement of the process of preparing the Unified Planning Work Program, the Transportation Improvement Program, or the Long-Range Transportation Plan, or preparing other than a minor amendment thereto (as determined by the Metropolitan Planning Organization), the Metropolitan Planning Organization shall extend notice to the Department, the Port of Palm Beach, Palm Beach County and the South Florida Regional Transportation Authority, advising said agency of the scope of the work to be undertaken and inviting comment and participation in the development process. The MPO shall ensure that the chief operating officials of the Department, Palm Tran, the Port of Palm Beach, Palm Beach County and the South Florida Regional Transportation Authority shall receive approximate 15 days written formal notice of all public workshops and hearings relating to the development of such plans and programs. It is stipulated by the parties to this Agreement that the failure by the Palm Beach Metropolitan Planning Organization to properly extend written or other notice shall not invalidate, or lodged as a claim to invalidate, the adoption of the aforementioned plans and programs.

(c) Local government comprehensive plans.

(1) In developing the TIP, Long-Range Transportation Plan, or a Corridor or Subarea Studies, or preparing other than a minor amendment thereto (as determined by the MPO), the Palm Beach Metropolitan Planning Organization, the Port of Palm Beach, Palm Beach County and the South Florida Regional Transportation Authority shall analyze for each local government in the Metro Area: (i) the comprehensive plan future land use elements; (ii) the goals, objectives, and policies of the comprehensive plans; and (iii) the zoning, of each local governments in the Metropolitan Area. Based upon the foregoing review and a consideration of other growth management factors, the MPO, the Transit Authority, the Port Authority, Aviation Authority, and (insert the names of other entities as applicable), shall provide written recommendations to local governments in the Metropolitan Area in the development, amendment, and implementation of their comprehensive plans. A copy of the recommendations shall be sent to the Regional Planning Council.

(2) The Palm Beach Metropolitan Planning Organization agrees that, to the maximum extent feasible, the Long-Range Transportation Plan and the project and project phases within the Transportation Improvement Program shall be consistent with the future land use element and goals, objectives, and policies of the comprehensive plans of local government in the Metropolitan Area. If the MPO's Transportation Improvement Program is inconsistent with a local government comprehensive plan, the MPO shall so indicate, and the MPO shall present, as part of the Transportation Improvement Program, justification for including the project in the program.

(d) Multi-modal transportation agency plans.

(1) In developing the Transportation Improvement Program, Long-Range Transportation Plan, or a Corridor or Subarea Studies, or preparing other than a minor amendment thereto (as determined by the Metropolitan Planning Organization), the Palm Beach Metropolitan Planning Organization shall analyze the affected master plans of Palm Tran, the Port of Palm Beach, Palm Beach County Department of Airports and the South Florida Regional Transportation Authority. Based upon the foregoing review and a consideration of other

transportation-related factors, the Palm Beach Metropolitan Planning Organization, shall from time to time and as appropriate, provide recommendations to the parties to this Agreement as well as local governments within the Metropolitan Area, for the development, amendment, and implementation of their master, development, or comprehensive plans.

(2) In developing or revising their respective master or development plans, the parties to this Agreement shall analyze the draft or approved Unified Planning Work Program, Transportation Improvement Plan, Long-Range Transportation Plan, or Corridor and Subarea Studies, or amendments thereto. Based upon the foregoing review and a consideration of other transportation-related factors, the parties to this Agreement shall from time to time and as appropriate, provide written recommendations to the Metropolitan Planning Organization MPO with regard to development, amendment, and implementation of the plans, programs, and studies.

(3) The Palm Beach Metropolitan Planning Organization agrees that, to the maximum extent feasible, the Transportation Improvement Program shall be consistent with the affected master plans and development plans of the parties to this Agreement.

(e) By letter agreement to be executed by the Palm Beach Metropolitan Planning Organization and the affected Transit Agency, Port District, Aviation Agency, and Regional Transportation Authority represented by Metropolitan Planning Organization members, the Palm Beach Metropolitan Planning Organization and the affected agency or authority shall mutually develop a process for planning coordination, forwarding recommendations, and project programming consistency to be referred to as the "letter agreement". The parties to this Agreement agree that the Palm Beach Metropolitan Planning Organization need only include in the Transportation Improvement Program those state-funded airport and seaport projects that directly relate to surface transportation activities. The process agreed to in the letter agreement shall provide flexible deadlines for inter-agency comment on affected plans referenced in this section. Upon approval, the letter agreement shall be appended to this Agreement and shall be an exhibit hereto. The signatories to the letter agreement may revise or terminate the letter agreement upon 30 days written notice to all other parties to this Agreement but without approval of other parties hereto.

ARTICLE 4 INTERGOVERNMENTAL COORDINATION AND REVIEW

Section 4.01. Coordination with Regional Planning Council. The Regional Planning Council shall perform the following tasks:

(a) Within 30 days of receipt, review the draft of the proposed Transportation Improvement Program, Long-Range Transportation Plan, Corridor and Subarea Studies, or amendments thereto, as requested by the Metropolitan Planning Organization, to identify inconsistencies between the foregoing plans and programs and applicable local government comprehensive plans adopted pursuant to Chapter 163 *et seq.*, Florida Statutes, for counties and cities within the Metropolitan Area and the adopted Strategic Regional Policy Plan.

(1) The parties hereto recognize that, pursuant to Florida law, the Long-Range Transportation Plan of the Palm Beach Metropolitan Planning Organization must be considered by cities and counties within

the Metropolitan Area in the preparation, amendment, and update/revision of their comprehensive plans. Further, the Long-Range Transportation Plan and the projects and project phases within the Transportation Improvement Plan are to be consistent with the future land use element and goals, objectives, and policies of the comprehensive plans of local governments in the Metropolitan Area to the maximum extent feasible. Therefore, promptly upon completion of its review of the draft proposal, the Regional Planning Council shall advise the Metropolitan Planning Organization and each affected county or city of its findings;

(2) If, after completing its review of the draft proposal, the Treasure Coast Regional Planning Council deems that the plans and programs submitted are not acceptable, the Regional Planning Council shall promptly advise the Palm Beach Metropolitan Planning Organization in writing of its concerns and identify those portions of the submittals which need to be reevaluated and potentially modified; and

(3) Upon final adoption of the proposed Transportation Improvement Program, Long-Range Transportation Plan, Corridor and Subarea Studies, or amendments thereto, the Palm Beach Metropolitan Planning Organization may request that the Treasure Coast Regional Planning Council consider adoption of regional transportation goals, objectives, and policies in the Strategic Regional Policy Plan implementing the adopted Transportation Improvement Program, Long-Range Transportation Plan, Corridor and Subarea Studies, or amendments thereto. If the proposed plan, program, or study, or amendments thereto, was the subject of previous adverse comment by the Treasure Coast Regional Planning Council, the Metropolitan Planning Organization will identify the change in the final adopted plan intended to resolve the adverse comment, or alternatively, the Metropolitan Planning Organization shall identify the reason for not amending the plan as suggested by the Treasure Coast Regional Planning Council.

(b) Provide the availability of the conflict and dispute resolution process as set forth in Article 5 below.

ARTICLE 5 CONFLICT AND DISPUTE RESOLUTION PROCESS

Section 5.01. Disputes and conflicts under this Agreement. This process shall apply to conflicts and disputes relating to matters subject to this Agreement, or conflicts arising from the performance of this Agreement. Except as otherwise provided in this Article 5, only representatives of the agencies with conflicts or disputes shall engage in conflict resolution.

Section 5.02. Initial resolution. The affected parties to this Agreement shall, at a minimum, ensure the attempted early resolution of conflicts relating to such matters. Early resolution shall be handled by direct discussion between the following officials:

- for the Florida Department of Transportation: by the District Director for Planning and Programs
- for the Palm Beach Metropolitan Planning Organization: by the Director
- for the Treasure Coast Regional Planning Council: by the Executive Director
- for Palm Tran: by the Executive Director
- for the Port of Palm Beach: by the Executive Director
- for the Palm Beach County Airports: by the Director
- for the South Florida Regional Transportation Authority: by the Executive Director

Section 5.03. Resolution by senior agency official. If the conflict remains unresolved, the conflict shall be resolved by the following officials:

for the Florida Department of Transportation: by the District Secretary
for the Palm Beach Metropolitan Planning Organization: by the Chair
for the Treasure Coast Regional Planning Council: by the Chair
for Palm Tran: by the Assistant County Administrator
for the Port of Palm Beach: by the Chair
for the Palm Beach County Airports: by the Deputy County Administrator
for the South Florida Regional Transportation Authority: by the Chair

Section 5.04. Alternative Regional Planning Council dispute resolution. If a resolution is not possible, the parties may undertake dispute resolution pursuant to the Regional Planning Council procedure set forth in Rule 24K-4, Florida Administrative Code. All parties to the dispute must agree to undertake this procedure before it may be invoked.

Section 5.05. Resolution by the Office of the Governor. If the conflict is not resolved through conflict resolution pursuant to Sections 5.02, 5.03, and 5.04 of this Agreement, the parties shall petition the Executive Office of the Governor for resolution of the conflict pursuant to its procedures. Resolution of the conflict by the Executive Office of the Governor shall be binding on all parties.

ARTICLE 6 MISCELLANEOUS PROVISION

Section 6.01. Constitutional or statutory duties and responsibilities of parties. This Agreement shall not be construed to authorize the delegation of the constitutional or statutory duties of any of the parties. In addition, this Agreement does not relieve any of the parties of an obligation or responsibility imposed upon them by law, except to the extent of actual and timely performance thereof by one or more of the parties to this Agreement or any legal or administrative entity created or authorized by this Agreement, in which case this performance may be offered in satisfaction of the obligation or responsibility.

Section 6.02. Amendment of Agreement. Amendments or modifications of this Agreement may only be made by written agreement signed by all parties here to with the same formalities as the original Agreement.

Section 6.03. Duration; withdrawal procedure.

(a) Duration. This Agreement shall have a term of (5) years and shall automatically renew at the end of said (5) years for another (5) term and every (5) years thereafter. At the end of the (5) year term and at least every (5) years thereafter, the parties hereto shall examine the terms hereof and agree to amend the provisions or reaffirm the same. However, the failure to amend or to reaffirm the terms of this Agreement shall not invalidate or otherwise terminate this Agreement.

(b) Withdrawal procedure. Any party may withdraw from this Agreement after presenting in written form a notice of intent to withdrawal to the other parties to this Agreement and the MPO, at least (90) days prior to the intended date of withdrawal; provided, that financial commitments made prior to withdrawal

are effective and binding for their full term and amount regardless of withdrawal.

Section 6.04. Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice is required to be given and shall be addressed as follows:

Florida Department of Transportation, District IV
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309-3421

Palm Beach Metropolitan Planning Organization
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411-2749

Palm Beach County Board of County Commissioners
301 North Olive Avenue, 12th Floor
West Palm Beach, Florida 33401

Port of Palm Beach
P. O. Box 9935
Riviera Beach, Florida 33419

Treasure Coast Regional Planning Council
301 East Ocean Boulevard, Suite 300
Stuart, Florida 34994

South Florida Regional Transportation Authority
800 NW 33rd Street, Suite 100
Pompano Beach, Florida 33064

A party may unilaterally change its address or addressee by giving notice in writing to the other parties as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

Section 6.05. Interpretation.

(a) Drafters of Agreement. All parties hereto were each represented by, or afforded the opportunity for representation by legal counsel, and participated in the drafting of this Agreement and in the choice of wording. Consequently, no provision hereof should be more strongly construed against any party as drafter of this Agreement.

(b) Severability. Invalidation of any one of the provisions of this Agreement or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect; provided, that such remainder would then continue to conform to the terms and

requirements of applicable law.

(c) Rules of construction. In interpreting this Agreement, the following rules of construction shall apply unless the context indicates otherwise:

- (1) The singular of any word or term includes the plural;
- (2) The masculine gender includes the feminine gender; and
- (3) The word "shall" is mandatory, and "may" is permissive.

Section 6.06. Attorney's Fees. In the event of any judicial or administrative action to enforce or interpret this Agreement by any party hereto, each party shall bear its own attorney's fees in connection with such proceeding.

Section 6.07. Agreement execution; use of counterpart signature pages. This Agreement, and any amendments hereto, may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

Section 6.08. Effective date. This Agreement shall become effective upon its execution by all parties hereto.

Section 6.09. Other authority. In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is required under applicable law to enable the parties to enter into this Agreement or to undertake the provisions set forth hereunder, or to observe, assume or carry out any of the provisions of the Agreement, said parties will initiate and consummate, as provided by law, all actions necessary with respect to any such matters for required.

Section 6.10. Parties not obligated to third parties. No party hereto shall be obligated or liable hereunder to any party not a signatory to this Agreement. There are no express or intended third party beneficiaries to this Agreement.

Section 6.11. Rights and remedies not waived. In no event shall the making by the Department of any payment to the Metropolitan Planning Organization constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Metropolitan Planning Organization, and the making of any such payment by the Department while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the Department in respect of such breach or default.

Section 6.12. Non-appropriation. Each party's approval of this Agreement, its performance of its obligation hereunder, and the Agreement's continuation from one fiscal year to the next and automatic renewal are subject to and contingent upon an annual budgetary appropriation by each party's legislative body for the purposes of this Agreement.

Section 6.13 Filing. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

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IN WITNESS WHEREOF, the undersigned parties have executed this Joint Participation Agreement on behalf of the referenced legal entities.

Signed, Sealed, and Delivered in the presence of:

Signed: _____
Chair, Board of County Commissioners

Signed: _____
Chair, Metropolitan Planning Organization

Witness: _____
Deputy Clerk

Witness: _____
Executive Secretary

Signed: Wayne H. Fildes
Chair, Port of Palm Beach

Signed: Brian K. Kamm
Chair, South Florida Regional Transportation Authority

Witness: Hon. G. Baer
Executive Director

Witness: Joy L. Gullet
Executive Director

Signed: Robert L. Bunker
Chair, Treasure Coast Regional Planning Council

Signed: _____
District Secretary - FDOT

Witness: MOOZ
Executive Director

Witness: _____
Executive Secretary

APPROVED AS TO LEGAL SUFFICIENCY BY: [Signature]
James J. Moore
COUNSELLOR AT LAW
GREENGLASS TRIANGLE
77 SOUTH FLAGLER DRIVE WEST PALM BEACH 33401
561-650-7963