



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years:	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>					

# ADDITIONAL FTE  
POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included In Current Budget? Yes \_\_\_ No \_\_\_

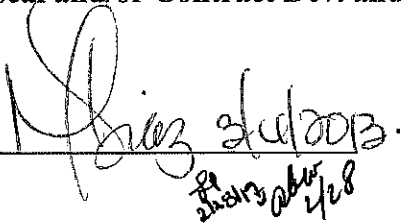
Budget Account No: Fund \_\_\_ Agency \_\_\_ Org. \_\_\_ Object \_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**III. REVIEW COMMENTS**

A commitment to fund any deficit will be funded by the General Fund.

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

  
OFMB

  
Contract Dev. and Control

**B. Legal Sufficiency:**

  
Assistant County Attorney 3/11/13

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

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

**INTERLOCAL AGREEMENT  
FOR STAFF AND SERVICES  
BETWEEN PALM BEACH COUNTY AND THE PALM BEACH  
METROPOLITAN PLANNING ORGANIZATION**

**THIS INTERLOCAL AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2013, by and between Palm Beach County, Florida, a political subdivision of the State of Florida, by and through its Board of County Commissioners (also referred to herein as the "County") and the Palm Beach Metropolitan Planning Organization, a body politic, created in accordance with and operating pursuant to Sections 163.01 and 339.175, Florida Statutes (referred to herein as the "MPO").

**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**, Section 163.01, Florida Statutes, authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, the Governor of Florida has designated the MPO as the metropolitan planning organization for the Palm Beach County urbanized area, and the Governor, through the Florida Department of Transportation (referred to herein as "FDOT"), has entered into an interlocal agreement with Palm Beach County and other units of general purpose local government and special purpose government located within the affected urbanized area and designated for membership on the MPO; and

**WHEREAS**, on June 22, 2004, the aforesaid Interlocal Agreement was filed in the official records of the Board of County Commissioners of Palm Beach County, Florida, by its Clerk, Dorothy H. Wilken (R2004 1491); and

**WHEREAS**, pursuant to Section 339.175(2)(b), Florida Statutes, the MPO is an independent governmental entity separate and distinct from each and all of the governmental entities which are parties to the interlocal agreement creating the MPO; and

**WHEREAS**, under Chapters 125 and 163, Florida Statutes, the County is authorized to enter into interlocal agreements and to contract with the MPO and other governmental entities for the provision and exchange of certain services; and

**WHEREAS**, pursuant to Section 339.175(6)(g), Florida Statutes, the MPO has the authority to contract with the County for the provision and exchange of certain services to accomplish its transportation planning and programming duties and administrative functions; and

**WHEREAS**, the MPO is desirous of obtaining assistance from the County that will enable it to manage and continue the cooperative and comprehensive transportation planning process as mandated by State and Federal law; and

**WHEREAS**, the MPO acknowledges that the County may desire to obtain certain transportation planning services from the MPO to assist the County in managing its roadways and comprehensive transportation planning process; and

**WHEREAS**, the provision of the services described herein will mutually benefit the parties hereto and the residents of Palm Beach County.

**NOW THEREFORE**, in consideration of the foregoing and the other mutual obligations and benefits described herein, the parties agree as follows:

**SECTION 1. PURPOSE.**

1.1. The purpose of this Interlocal Agreement is to describe and clarify the parties' roles and obligations regarding their duties and the scope of services each is to provide to the other. Subject to the provisions of this Agreement, the County will furnish or make available the office space, facilities, personnel, staff, contractors, supplies, equipment and other incidental items and support services as may be required and necessary for the MPO to carry on the transportation planning and programming process required by state and federal law and the then current Transportation Planning Funds Joint Participation Agreement between the MPO and FDOT. The MPO will utilize the office space, facilities, personnel, staff, contractors, supplies, equipment and other incidental items and services provided or made available to the MPO, consistent with and in accordance with all applicable state, federal and local laws, the Unified Planning Work Program (UPWP), the terms and conditions of this Agreement, and the rules, policies and procedures of the County, unless authorized to the contrary herein. In accordance with the provisions of this Agreement, the MPO will provide services to the County, which may include but are not limited to, modeling, GIS mapping, socio-economic data acquisition and analysis, and other information and planning services needed by the County for its governmental operations.

**SECTION 2. DEFINITIONS.** The following terms shall be defined for purposes of this Agreement to have the following meanings, unless the context shall affirmatively and clearly indicate to the contrary:

- (a) "Agreement" or "Staff Services Agreement" means and refers to this Agreement as it may be amended or extended from time to time.
- (b) "County" means and refers to Board of County Commissioners of Palm Beach County, Florida.
- (c) "FDOT" means and refers to the Florida Department of Transportation.
- (d) "FHWA" means and refers to the Federal Highway Administration, an agency of the United States Department of Transportation.
- (e) "FRS" means and refers to the Florida Retirement System.
- (f) "FTA" means and refers to the Federal Transit Administration, an agency of the United States Department of Transportation.

- (g) "Governing Board" means and refers to the governing board of the MPO.
- (h) "ISS" means and refers to the County's department that handles information systems and technology services, the Information System Services Department.
- (i) "Merit Rules" means the Palm Beach County Merit System Rules and Regulations.
- (j) "Merit Service" means those job classifications set forth in Palm Beach County's Classification and Pay Plan which are not at-will, as further described in Section 1.02 of the Merit Rules.
- (k) "MOU" means a memorandum of understanding between the MPO's Executive Director or authorized representative and the County Administrator for Palm Beach County, Florida.
- (l) "MPO" means and refers to the Palm Beach Metropolitan Planning Organization, a Metropolitan Planning Organization created and operating pursuant to Section 339.175, Florida Statutes.
- (m) "MPO staff" means and refers to the employees of Palm Beach County that are made available to or assigned to the MPO.
- (n) "MPO employees" means and refers to employees of the Palm Beach Metropolitan Planning Organization.
- (o) "OMB" means and refers to the Office of Management and Budget, an agency of the government of the United States of America.
- (p) "Prior Staff Services Agreement" means and refers to the Agreement between Metropolitan Planning Organization of Palm Beach County and the Palm Beach County Board of County Commissioners for Staff Services which took effect on October 1, 1985.
- (q) "Regulations" means and refers to regulations of the FHWA or the FTA in titles 23 and 49 of the Code of Federal Regulations (CFR).
- (r) "UPWP" means and refers to the Unified Planning Work Program as provided for in 23 CFR Part 450. See *e.g.*, 23 CFR §§ 450.140 and 450.308.

### **SECTION 3. TERM.**

3.1 The term of this Agreement shall begin on April 1, 2013, and shall continue up to and include September 30, 2018. The County hereby grants to the MPO the option to extend the term of this Agreement for up to two (2) additional five (5) year periods. (If both options are exercised the term of the Agreement will expire on September 30, 2028.) In the event the MPO elects to exercise an option granted hereunder, it will notify the County in writing of its election, in accordance with the provisions of Section 32 of this Agreement, at least one (1) year prior to the expiration of the then current term of the Agreement.

#### **SECTION 4. PRIOR STAFF SERVICES AGREEMENT.**

4.1 Notwithstanding anything contained in this Agreement, the parties agree that upon its commencement, the Prior Staff Services Agreement will expire without further action by the parties. The MPO may continue to occupy the office space and use the space and facilities previously made available to the MPO for its use under the Prior Staff Services Agreement until such time as the County makes available other office space and facilities, or this Agreement expires or is terminated. All equipment, supplies and personnel provided by the County under the Prior Staff Services Agreement shall continue to be furnished by the County and remain in the possession and use of the MPO unless provided in this Agreement to the contrary. The parties acknowledge that this Agreement, as it may be amended from time to time, establishes new and additional terms and conditions for the continued occupancy, possession and use of the office space, facilities, equipment, supplies, services, staff, personnel, contractors and other items and services provided by or made available by the County for the use and benefit of the MPO.

#### **SECTION 5. COUNTY SERVICES.** The County will provide the following to the MPO:

5.1 Office Space, Equipment and Facility Services. (a) The County shall provide the MPO with office space suitable to conduct the MPO's business and shall provide the MPO with facility services such as janitorial services, security, telephone communications, technical support, pest control, and the repair, maintenance, or replacement of equipment on the same terms and conditions by which the County provides facility services to its departments.

(b) The MPO may occupy and use the office space made available to it and shall use all facilities, equipment, supplies, personnel and services provided by County in accordance with federal, state and local law, County rules and requirements, and all County policies and procedures (PPMs) deemed applicable by County, as they may be amended from time to time, except as may be otherwise provided in this Agreement. Notwithstanding the foregoing, a decision by the MPO to not occupy and use the space made available shall constitute grounds for termination under Section 11.2 of this Agreement but, in such case, a party shall only be required to give 6 months written notice of termination prior to the termination date.

(c) Should the County determine that the MPO will no longer be housed in the office space it currently occupies or the facility in which it is located, the County will give the MPO at least six (6) months notice of its intent to relocate the MPO. If, in the judgment of the County, a situation exists that warrants the relocation of the MPO within the six (6) months notice period, the County will give the MPO as much notice as it determines is reasonably possible. Such a situation may include but is not limited to the destruction of or damage to the office space or facility, the existence of or likely creation of a safety hazard to life or property, or a determination by County's Board of County Commissioners that it has an imminent need to use the office space or facility for County governmental purposes.

5.2 Meeting/Facility Space. The County will make space available for meetings of the MPO Governing Board and its advisory boards on the same terms and conditions that meeting space is made available to the County's departments, boards, commissions and the like; provided that facilities are available for the purposes needed. The MPO will coordinate its reservations of meeting space with the

County staff responsible for reserving the particular room or facility. The MPO will apprise the appropriate County staff of its need, if any, for assistance to persons with disabilities, including those needing special accommodations to participate in meetings held in County facilities. The MPO shall ensure that the facilities it uses are open and accessible to the public, including individuals with disabilities, in accordance with the requirements of state, federal and local law.

5.3 Government Television Facilities. The MPO may request to obtain the services of the County's government television and public affairs staff and to utilize the County's equipment, for the recording, taping and/or re-broadcasting of the MPO Governing Board meetings. The County has discretion as to whether to make such services available. If such services are made available, the MPO will be responsible for the costs of such services. The MPO shall be charged at the same rates charged to other governmental entities located within Palm Beach County's geographical boundaries.

5.4 Mail Services. The County will make its internal mail courier services available to the MPO on the same terms and conditions County makes such services available to its departments.

5.5 Communications. (a) The County will provide the MPO with the use of its telephone communication system, including but not limited to messaging, telephone configurations, local and long distance calling, and provide necessary repairs to the system in the same manner and on the same terms and conditions that the County's system and services are provided to or made available to County's departments.

(b) The County will provide the MPO with internet access, the use of its networks, servers and technology and certain information systems services in the same manner and on the same terms and conditions such services are made available to the County's departments. Any base charges for information systems services calculated as an annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the MPO by the County on a monthly basis.

(c) The MPO staff shall follow all County policies and procedures, and administrative orders relating to the use of the County's computer network, servers, computer equipment, hardware, software, internet access, telephone system local and long distance calling, and other communication equipment when using County equipment, including but not limited to information and network access. Any software or telecommunication licenses obtained by the County for the benefit of the MPO may be obtained in the name of the County, unless paid for by the MPO with federal funds. In the latter case, the licenses should be in the name of the "MPO" or the "MPO and the County."

(d) The MPO shall obtain FHWA's approval to procure computer hardware and software, which will be owned by or paid for by the MPO and which costs in excess of Five Thousand Dollars (\$5,000.00) in conformity with the requirements of the MPO's UPWP, as it may be modified or replaced from time to time.

5.6 Procurements. (a) The County will make the services of its Purchasing Department available to the MPO in the same manner and on the same terms and conditions that such services are made available to the County's departments. Should the MPO elect to use the services of County's Purchasing Department, it agrees that its procurement(s) will be undertaken in accordance with the County's ordinances, policies, procedures, rules and requirements, unless the procurement is subject to different or additional conditions and requirements under state or federal law, regulation, guidance, grant condition or other funding requirement or condition of the MPO. In such cases, the state or

federal law, regulation, guidance, grant condition or funding requirement or condition applicable to the MPO's procurement will have priority over the County's processes or requirements. The services provided by the County's Purchasing Department may include but are not limited to the following: (1) processing of purchase order requests and any applicable changes; (2) approval of MPO vendors; (3) meeting room reservations; (4) assistance with the preparation of specifications, the review of solicitations, and evaluation of bids and proposals; (5) handling of suspensions and debarments; and (6) resolution of protests.

(b) The MPO will adhere to the provisions of Section 287.055, Florida Statutes ("The Consultants' Competitive Negotiation Act"), for the procurement of professional services subject to the requirements of the statute.

(c) The parties acknowledge that the MPO utilizes a Disadvantaged Business Enterprise (DBE) Program that is based on Florida's Department of Transportation's (FDOT) program and differs from the County's Small Business Enterprise Program.

(d) In lieu of using the services of the County's Purchasing Department, the MPO may adopt its own procurement procedures and policies, but shall adhere to all federal and state laws, regulations, guidances, grant conditions and funding requirements, applicable to its procurement. The MPO may also solicit and utilize procurement services independent of the County's Purchasing Department or may utilize the MPO staff and its own procedures for the purchase of services or materials. All MPO procurements using federal funds should be accounted for and included in the MPO's UPWP, which does receive federal approval.

(e) The MPO Governing Board shall approve all procurements of computer hardware and software in excess of Five Thousand Dollars (\$5,000) to be used by MPO Staff and shall obtain approval from the FHWA as outlined in the MPO's UPWP. Procurement of hardware and software less than Five-Thousand Dollars (\$5,000) shall be approved by the MPO's Executive Director. All purchases using Federal funds should be accounted for and included in the MPO's UPWP, which does receive Federal approval, although the MPO's Executive Director will approve lesser individual expenditures from within the overall approved budget.

(f) The MPO will approve items purchased which are exempt from the County's Purchasing Ordinance and the County may not approve such purchases.

5.7 Payroll. Payroll services for the County employees or personnel made available to the MPO (also referred to herein as "MPO staff") will be provided in the same manner and on the same terms and conditions that such services are provided to the County's departments and staff, except as provided herein. The MPO will complete and present to the County all required time reports for processing in accordance with the County's payroll policies and procedures and in accordance with the requirements of applicable state and federal law. The MPO will create and use its own time sheets to meet the requirements of state and federal law. The MPO will act in conformity with all applicable personnel, payroll and accounting processes and procedures of the County unless different processes and procedures are provided for herein or agreed to by the MPO's Executive Director and the County's County Administrator (also referred to herein as "County's Administrator" or "County Administrator"). If deemed necessary by the County, the agreement or consent of the Clerk & Comptroller may be required.



5.8 Finance and Budget. (a) The County will incorporate into its budgetary system the MPO's budget and will provide financial management of federal, state and local monies granted to the MPO in accordance with the state's and federal governments generally accepted accounting and grant management procedures, as approved from time to time by FDOT, FHWA, and FTA *inter alia*. The MPO Governing Board shall approve the MPO's grant applications and awards. The County may not review, approve or deny changes to the MPO's grant applications or awards. It shall be the responsibility of the MPO to apprise and assist the County with accounting and grant management procedures if requested or deemed necessary by the County. The financial system should include accounts payable and accounts receivable. The MPO's budget will be operated or shown as a separate, segregated fund with self-balancing accounts unless a different budget is required by law and/or established by the County's Administrator and the MPO's Executive Director through a Memorandum of Understanding (MOU). The accounting system will provide monthly reconciliations to budget figures, depicting the amount of the MPO's budget year that has passed and the amount of each revenue or expenditure account, sub-account, task, or sub-task for which funds have been received or expended. The County will endeavor to pay all invoices and billings approved for payment by the MPO or the MPO's Executive Director, if so authorized, subject to the actions of County's Clerk & Comptroller, an independent constitutional officer, and the performance of the officer's constitutional pre-audit functions. Billings to be paid for pursuant to this Agreement must first be approved by the MPO, and/or the MPO's Executive Director if so authorized, in accordance with the provisions of this Agreement.

(b) The County will include MPO revenues and expenditures in the County's budget system, and will authorize the County's Finance Department to pay MPO expenses from appropriated funds subject to reimbursement, after approval by the MPO and/or the MPO's Executive Director, if so authorized, or as otherwise provided in this Agreement. Other than providing basic cost information (e.g., indirect and direct rates and charges, FRS contributions, employee health insurance, employee life insurance, *etc.*) to the MPO and being reimbursed for such costs and charges, the County does not have authority over the MPO's funds and budget, except as to County funds appropriated by the County for the purposes of the MPO or as may otherwise be provided in this Agreement or by state or federal law. The County shall have the right to offset its costs against the MPO's budget, in accordance with state and federal law and regulations; provided that such offsets are permitted under law and the terms and conditions of any grant received by the MPO. The parties further agree that the County's Administrator and the MPO's Executive Director may enter into an MOU, for the purpose of reducing administrative inconvenience, inefficiencies and/or costs and to clarify the rights and responsibilities of either party under this Agreement.

5.9 Audit. (a) The County may include the MPO accounts in the County's annual accounting and budget audit which is to conform to the requirements of Florida law. The County's and MPO's accounting records will be made open and available to the MPO and any auditors retained by the MPO during regular business hours. Each party agrees to make its personnel available to answer questions and provide information needed to audit, review or otherwise examine MPO-related accounting records. Copies of any MPO-related accounting records will be made available by the County to facilitate the audit. Any charges to be made by the MPO or the MPO's auditors shall be confirmed by the County Administrator or his designee and the MPO's Executive Director, consistent with the requirements of this Agreement and Florida's Public Records Law. MPO-related accounting records shall be regarded as "public records" subject to Chapter 119, Florida Statutes.

(b) The timeframe to be covered in the audit shall be as defined by the County and MPO, covering a time period of not less than 365 days. The audit will recognize the MPO as an independent governmental entity separate from and not subordinate to the County. The accountant performing the audit will express an opinion, in accordance with the requirements of Florida law and applicable federal law, regulation and/or grant conditions, as to whether the government-wide financial statements and the fund financial statements which collectively comprise County's basic financial statements are presented in accordance with generally accepted accounting principles. The MPO may also require that the accountant performing the audit express an opinion as to whether the financial statements referred to above present fairly, in all material respects, the respective financial position of MPO, and the respective changes in financial position in conformity with accounting principles generally applicable to governmental entities within the State of Florida and accepted in the United States of America.

(c) The County will close its books relative to all MPO-related accounts and prepare trial balances that will permit the preparation of financial statements in accordance with generally accepted accounting principles. The County will endeavor to prepare schedules and analyses (as required from time to time by the MPO) and complete same before an accountant performing the audit begins MPO year-end audit procedures.

(d) Upon request by the MPO and at its sole expense, the County's accountant will prepare from time to time a "Comprehensive Annual Financial Report" or similar named annual report as set forth and in conformance with generally accepted accounting principles, covering such time frame and governmental standards as may be required by the MPO. The accountant performing the audit may also be required by the MPO to prepare at the MPO's expense, a review of the systems of internal control and the policies and procedures of the MPO and the County as they relate to the MPO and MPO-related accounts, so as to obtain an understanding of their design, whether they have been implemented, and to assess control risk.

(e) Upon request by the MPO and at the MPO's sole expense, the County's accountant will prepare the following reports:

(1) All financial statement audit reports required by: generally accepted auditing standards issued by the American Institute of Certified Public Accountants; generally accepted government auditing standards (GAGAS) as issued by the Comptroller General of the United States; and audit reports and management letters required by Sections 11.45 and 218.503, Florida Statutes, and Chapter 10.550, Rules of the Auditor General, as each and all may be amended from time to time. The annual financial statement audit shall include the governmental activities, the business-type activities, each major fund, and aggregate discretely presented component unit and remaining fund information that collectively comprise the basic financial statements.

(2) All audit reports required by the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996, Public Law 104-156 (31 U.S.C.A., Sections 7501 to 7507) and U.S. Office of Management and Budget (OMB) Circular No. A-133.

(3) Audit reports required by Section 215.97, Florida Statutes, the Florida Single Audit Act, and Chapter 10.550, Rules of the Auditor General.

(f) Progress reports; appearances.

(1) At the direction of the MPO and at its sole expense, the County will request that its accountant provide periodic progress reports to the MPO or other appropriate governmental authorities. The County's accountant will appear before an Audit Committee or the MPO Governing Board, as requested by the MPO, to present the findings of all reports in summary form.

(2) The County will request its accountant to immediately notify the MPO's Executive Director of any indications of fraud, abuse, waste, illegal acts, or other significant noncompliance discovered or identified during the audit.

(3) The accountant may be asked to perform other professional services ("Other Services"), such as special reports, opinions, analyses or other compliance and accounting engagements to be prepared either for management, other governments, auditors, citizens, or other entities; provided, that any expense for the accountant's preparation of said Other Services shall be borne by the MPO. The accountant will be required to ensure that performance of such Other Services does not impair the accountant's independence under generally accepted auditing standards issued by the American Institute of Certified Public Accountants or the Florida State Board of Accountancy, or with generally accepted government auditing standards issued by the Comptroller General of the United States.

(g) The County and the MPO agree to provide each to the other and any third party all information necessary to complete said audit.

(h) Notwithstanding anything contained herein, the MPO may elect to perform its own audits or other financial reviews instead of having such performed by the County. In such case, the MPO shall be responsible for securing its own independent audit at its own cost. The County's books and records relating to all MPO revenues and expenses together with supporting documents will be made available for inspection, audit, and copying during regular business hours to the MPO's auditor. The County will provide necessary assistance to the MPO's auditors in securing, copying, and having facilities to review the books, papers, and support documents, all relating to the MPO's finances, at the MPO's sole expense. In such case, the MPO shall retain, at its expense, an annual accounting and budget audit performed by a certified public accountant licensed by the State of Florida to perform accounting audits and reviews. Audits shall be conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, and any other standards or requirements as required by federal or state agencies having jurisdiction over MPO funds and as required from time to time by the FDOT, the FHWA, or the FTA. The County, during regular business hours, will make available to the MPO and its auditors, the County's accounting records, journals, ledgers, check registers, checks, invoices, accounting documentation and other financial records related to the MPO (the "accounting records"). The County will make its staff available to answer questions and provide all records necessary to conduct any audit, review, or other examination of MPO related accounting records and will provide copies of any MPO related accounting records needed to facilitate the audit. The MPO shall be notified of any charges to be made to the MPO or its auditors for County services related hereto. In the event of a disagreement as to the scope or validity of the charges, the MPO's Executive Director or designee and the County's Administrator or designee shall meet and endeavor to resolve any disagreement. All MPO-related accounting records shall be regarded as "public records" subject to Chapter 119, Florida Statutes.

5.10 Coordination. (a) The MPO agrees that it will keep the County apprised of all state, federal and grant and contract requirements that may impact the actions, services and activities of the County under this Agreement so as to insure that the actions and activities of the MPO are in conformity with law, all applicable state and federal laws, rules, regulations, guidances, and grants and contract requirements.

(b) The MPO shall coordinate its acquisition of services and equipment with the County to ensure that all equipment, including but not limited to hardware, software, exchange servers, networks, internet access, telephone and other communication equipment are compatible with the equipment and services provided by or made available by the County and in the office space, facilities and meeting rooms provided by or made available by County to the MPO.

(c) All MPO-related purchases using federal funds should be accounted for and included in the MPO's UPWP, which does receive federal approval, although the MPO's Executive Director may approve lesser individual expenditures from within its overall approved budget.

5.11 Travel. All travel by MPO Governing Board members shall be approved by the MPO Governing Board. All travel by the MPO's Executive Director shall be approved by the MPO's Chair or his or her designee and the County Administrator or his designee. All travel by MPO staff shall be approved by the MPO's Executive Director. All travel expenses shall be paid in accordance with the provisions of Section 112.061, Florida Statutes and the policies of County and FDOT, and any supplemental procedures, policies or rules adopted by the MPO; provided that they are consistent with law and the provisions of this Agreement. In the event of a conflict between the County and FDOT's policies, if federal or state funds are used to pay the travel expenses, FDOT's policies shall control. All travel funded with federal funds shall be included in and paid consistent with the FHWA approved UPWP. Travel must also be conducted and paid for in accordance with the requirements of 2 U.S.C. Part 225, Cost Principles for State, Local, and Tribal Governments (formerly OMB Circular A-87). The County shall have no responsibility for or oversight over the travel of any MPO Governing Board member. At no time shall an MPO Governing Board member be deemed to be an employee, official, staff or volunteer of the County and the County shall have no liability or responsibility for the MPO Governing Board, any member thereof or advisor thereto.

5.12 Charges and Expenses. Unless otherwise provided herein, the MPO shall be charged for office space, facilities, equipment, supplies, services, contractors, personnel, staff and any other incidental matter at the same rates charged to departments of the County. Such charges shall be determined in accordance with the County's Federal Negotiated Indirect Cost Rate (NICR) for the then current fiscal year and applied to the MPO expended salary amount, unless County shall notify the MPO of a change in its methodology. The new or modified cost rate or approach shall become effective upon notice of such to the MPO unless otherwise agreed to by the County Administrator and the MPO's Executive Director, through a MOU.

## **SECTION 6. MPO SERVICES.**

6.1 Services to be Performed. Upon the request of the County, the MPO may provide transportation planning services, modeling, GIS mapping, socio-economic data acquisition and analysis, and other information and planning services needed by the County for its governmental operations. Such services may also include but are not limited to the following:

(a) State and Federal Transportation Funds. Transportation planning and programming activities necessary to maintain the County's eligibility to receive federal and state transportation funds.

(b) Pedestrian Facilities Planning. The MPO will support and assist the County with the planning and implementation of pedestrian facilities throughout the County's geographical boundaries. This includes, but is not limited to, review of site plans, field reviews, multi-jurisdiction coordination and public involvement.

(c) Bicycle Facilities Planning. The MPO will support and assist the County with the planning and implementation of bicycle facilities throughout the County's geographical boundaries. This includes, but is not limited to, field reviews, multi-jurisdiction coordination and public involvement.

(d) Trail Facilities Planning. The MPO will support and assist the County with the planning and implementation of trail facilities throughout the County's geographic boundaries. This includes, but is not limited to field reviews, multi-jurisdiction coordination and public involvement.

(e) Public Involvement/Outreach. The MPO will support and assist the County with public outreach by reaching out to and educating the public on transportation-related issues. Services may include, but not be limited to, presentations and attendance at public meetings and special events, and dealing with public inquiries and requests/complaints.

(f) Developments of Regional Impact. The MPO will support and assist the County with review of developments of regional impact (DRIs) and other planning activities in conformity with law and the requirements of its grant and funding agreements. Services may include review and comments concerning transportation elements.

(g) Traffic Impact Studies. The MPO will provide support and assist the County with the review of traffic impact studies on County and other governmental facilities.

(h) Inter-departmental Coordination. The MPO will provide support and assist the County with inter-departmental coordination of transportation planning programs and projects. The County departments to be involved in the inter-departmental coordination include, but are not limited to, Engineering, Planning and Zoning, Facilities, Parks & Recreation, Surface Transportation, and Airports.

(i) Governmental Coordination. The MPO will coordinate with other modal agencies, including but not limited to The Port of Palm Beach, FDOT, SFRTA and the Regional Planning Council, on transportation issues and projects.

(j) Agency Transportation Inter-governmental Coordination. As requested, the MPO 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.

(k) Insight and Updating on Transportation Legislation. The MPO will be current on developments in transportation planning programs, services, and legislation and shall provide technical support to the County and other local government agencies.

(l) Legislative Recommendations. The MPO will compile legislative recommendations for the County to submit to the local legislative delegation, Florida legislative committees, and other regional bodies relating to transportation planning and transportation-related aspects of comprehensive planning. The MPO will 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.

(m) Comprehensive Planning. The MPO will 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 MPO Transportation Plan as required by state law.

(n) Other. Any additional tasks or services requested to be performed by the MPO for the County, not delineated in this Agreement, may be performed upon the approval of the MPO's Executive Director or the MPO's Governing Board.

6.2 Limitation on MPO Services to be Provided. The parties understand and agree that the services provided to the County during the term of this Agreement, including the costs of such services, shall be set forth in a written work order signed by County's Administrator or his designee and the MPO's Executive Director or his designee, or the parties to this Agreement. The cost of such services shall be based upon and consistent with the actual hourly cost of the MPO staff assigned to do the work, and the actual hourly contract rates of any MPO contractors or consultants who are utilized in the performance of the services. If determined necessary, work orders will be approved by County's Board of County Commissioners and the MPO Governing Board.

## **SECTION 7. MPO PERSONNEL.**

7.1 MPO Staff. (a) The MPO Executive Director shall be an employee of the County who serves under the day-to-day direction, supervision and control of the MPO Governing Board. All other MPO staff will also be County employees assigned to the MPO by County; provided, that such employees have been deemed qualified, by the MPO's Executive Director, for the positions to be held. MPO staff will report to and serve under the day-to-day direction, supervision and control of the MPO's Executive Director. The MPO's Executive Director will have the same authority to discipline and terminate employees as is possessed by the heads of the County's departments. The County will not have day-to-day responsibility, supervision, management or control over the MPO staff. The MPO staff and its Executive Director shall be deemed to be functionally independent of the County in the performance of their duties and responsibilities for the MPO, except as may be provided in this Agreement or by an MOU signed by the MPO Chair or the MPO's Executive Director and the County's Administrator or his designee. No County department head shall have oversight over the MPO staff. Neither the MPO's Executive Director nor the MPO staff shall be encompassed within a department of the County or shown on the County's organizational chart as a division of a County department.

(b) All MPO staff shall remain employed in the County job classification held as of the effective date of this Agreement and shall retain their status as at-will or County Merit Service employees. It is the desire of the parties that each current MPO staff member maintains his or her current Merit Service status so long as the employee retains and occupies the job classification held on the effective date of this Agreement. However, any change in a Merit Service employee's job classification, including but not limited to that resulting from a promotion, demotion or any other

reclassification will result in the employee no longer being a part of County's Merit Service and the employee's position will become at-will. All new hires and each new MPO staff position created will be at-will.

(c) In order to facilitate the functional independence of the MPO staff, the County agrees that job classifications, salaries, layoffs and furloughs, and other policies may be modified for the MPO staff; provided that the MPO has the financial resources to be responsible for such modifications, the modifications are not prohibited by and will not conflict with the Merit Rules, the modifications are consistent with applicable state, federal and local law, and the modifications will not increase the County's financial responsibility or liability.

(d) In the event the County is determined to be liable for the acts or decisions of the MPO, its Governing Board, Executive Director, or any employee assigned to the MPO staff, the MPO shall reimburse the County for all costs and expenses incurred by County, including all attorney fees and costs, as a result of any act, decision or failure to act, in whole or in part, by the MPO Governing Board, its Executive Director, or the MPO staff.

(e) Each County employee assigned to the MPO, including its Executive Director and staff, will receive the same benefits as are made available to other general employees of the County (*i.e.*, rank and file employees who are not members of a collective bargaining unit) holding a similar position or classification, unless such benefits are modified as provided herein or not available by law, rule or regulation.

(f) The MPO shall perform services under this Agreement as an independent contractor and nothing contained herein shall be construed or interpreted to mean that the MPO, its Governing Body, or any member thereof, is an agent, employee, servant, volunteer or representative of the County and none shall possess the authority to bind the County to any representation, act or agreement. Neither the MPO's Executive Director nor any member of the MPO staff shall have the authority to bind the County to any representation, act or agreement, except as expressly allowed herein. The MPO shall be responsible for any and all acts or failures to act, including but not limited to negligent acts or omissions, and wrongful acts which the County is or is claimed to be responsible for as a result of its status as the employer of the MPO's Executive Director or any member of the MPO staff.

(g) In the event there is or will be a vacancy in the position of the MPO's Executive Director, the County's Administrator or his designee will meet with the MPO's Chair to discuss the process to be used to select a new Executive Director. In the event a selection committee process will be used, the County will advertise the position and screen the applicants. The County's Administrator or his designee and the MPO's Chair and Vice-Chair will serve on the selection committee. The County's Administrator and the MPO's Governing Board will each designate 2 additional individuals to serve on the selection committee so that a total of seven individuals may sit on the selection committee. The selection committee will review the applications, select the applicants to be interviewed and forward its recommendation to the MPO Governing Board. The MPO Governing Board may accept or reject the recommendation. If the recommendation is rejected, the selection committee will reconvene. If the MPO Governing Board accepts the recommendation it will forward its selection to County's Administrator who will present the recommendation to County's Board of County Commissioners for approval. If County's Board of County Commissioners rejects the recommendation, the selection committee will reconvene. The MPO and County acknowledge that a different process may be used as determined appropriate by the parties.

(h) Notwithstanding anything contained in this Agreement, the County, as the employer of all MPO staff, including the MPO's Executive Director, has the ultimate authority to remove, reassign, suspend or terminate any MPO staff or the MPO Executive Director. Nothing contained in this Agreement shall deprive the County of its ultimate authority or interfere with its exercise of such authority.

(i) The County may, upon the request or recommendation of the MPO Governing Body, terminate the MPO Executive Director for any reason or no reason at all. The County may also remove, reassign, suspend or terminate the MPO Executive Director for cause which includes but is not limited to misconduct, incompetency, insubordination, neglect of duty, being convicted or found guilty of, or entering a plea of guilty to any crime, regardless of adjudication of guilt, or any other good cause as determined by County. The MPO Executive Director's status shall, at all times, be that of an at-will employee of the County. Nothing contained in this Agreement shall alter the MPO Executive Director's status as an at-will employee of the County, create a contract of employment between the County and the MPO Executive Director or between the MPO and the MPO Executive Director, create enforceable rights in the MPO Executive Director's employment or continued employment with the County, or impinge upon the MPO's Executive Director's right to resign employment at any time for any reason or no reason at all.

7.2 MPO Employees. In the event the MPO desires to retain its own employees, the MPO shall notify the County of such intention at least one (1) year and one (1) month prior to the expiration of the then current term of this Agreement. The County shall have no liability or responsibility for MPO employees. The MPO's Executive Director shall meet with the County Administrator and staff, and the Clerk and Comptroller, if deemed necessary by County, to facilitate the cessation of services from MPO staff and/or the County. The MPO agrees that it will offer first opportunity for employment to County employees currently assigned to the MPO (*i.e.*, MPO staff) if the individuals are deemed qualified for employment.

7.3 Personnel Policies. (a) Although the MPO staff will be subject to County's Merit Rules and Regulations (referred to herein as the "Merit Rules") and the employment policies and rules of the County, the MPO may adopt its own employment policies and rules so long as they do not conflict with the Merit Rules applicable to County Merit Service employees and those applicable to at-will employees. The MPO further agrees that any employment policies and rules it adopts will conform to the requirements of applicable state, federal and local law, including but not limited to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, and all applicable state, federal and local laws, rules and regulations.

(b) A copy of any MPO proposed policy or rule shall be forwarded to the County's Administrator and Human Resources Director for review and comment prior to adoption. If the County advises the MPO that it has no objection to the proposed rule or policy (that it conforms to the requirements of law and is not inconsistent with the Merit Rules) it may become effective upon adoption. If the rule or policy is not acceptable to the County, the Chair of the MPO Governing Body or his designee and the MPO's Executive Director will meet with County's Administrator and/or Human Resources Director and other appropriate staff to attempt to resolve the County's concern or objection, with the goal of facilitating the desires of the MPO.



(c) The MPO may, from time to time, modify the job descriptions, classifications, pay grades and salary ranges of each of its positions, in accordance with the Merit Rules, County's Pay Plan and other applicable policies of the County to the extent such are applicable to the modification. The retention, supervision, discipline, evaluation, layoff, and dismissal of MPO staff shall be under the day-to-day direction, supervision, responsibility and control of the MPO.

7.4 County Human Resources. (a) The County will make its personnel services available to the MPO on the same terms and conditions such services are made available to the County's departments. Such personnel services may include the recruitment, hiring, screening, background and/or credit examination, and applicable pre-employment physical and drug testing of the MPO's Executive Director and the MPO staff and prospective staff. The County will permit MPO staff to participate in personnel-related training courses and programs on the same terms and conditions such courses and programs are made available to the County general employees. The MPO's Executive Director and MPO staff may receive unemployment compensation benefits, on the same terms and conditions that such benefits are made available by the County to its general employees.

(b) Notwithstanding anything contained herein, all personnel records of the MPO's Executive Director and staff shall be deemed public records of the County and shall be maintained in accordance with the policies and requirements of the County and Florida's Public Records Law.

7.5 County Employee Benefit Programs. (a) The MPO's Executive Director and MPO staff will participate in the County's employee benefits programs on the same basis and on the same terms and conditions the County makes such benefits available to its general employees and retirees. Such benefits currently include health plan(s), flexible spending accounts, participation in the Florida Retirement System, 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, deferred compensation, etc. The MPO understands and agrees that all employee benefit programs offered by County may change from time to time and can be withdrawn at any time as determined by County in its sole discretion. If benefit programs are changed, added or removed, the MPO staff will be advised of the changes, additions or deletions in the same manner and at the same time that the general employees of the County are notified. The MPO shall be responsible for the "employer" share of costs associated with the provision of any benefit program, and individual MPO staff members, including its Executive Director, will be responsible for all employee required co-pays, contributions or payment(s) on the same basis, terms and conditions that the County's general employees are responsible for such co-pays, contributions or payments.

(b) Should the MPO desire to employ all or some of its own staff or personnel, the County may require the modification of this Agreement or that the MPO enter into a separate agreement with the County and/or plan provider relating to its participation in the group health plan and/or other employee benefit plan(s) and the administration thereof. The parties' representatives shall meet and determine which, if any, County employee benefits will be made available for the participation of the MPO employees that are not County employees assigned to the MPO. The MPO shall be responsible for all costs associated with the provision of benefits to the MPO staff or employees. Notwithstanding any provision of this Agreement, if the MPO notifies County that it intends to employ all or some of its own staff or Executive Director (*i.e.*, hire or utilize non-County employees), the County shall not be obligated to make its benefit plans or other personnel-related benefits or services available to the MPO and/or to continue its relationship with the MPO, and the County may terminate this Agreement. The termination, cure and notice requirements of Sections 11 and 32 may be waived or modified by

County's Administrator and the MPO's Executive Director, to facilitate the purposes of this Section 7 of the Agreement and the desires of the parties.

(c) All MPO staff, by virtue of their status as County employees, will be required to participate in the Florida Retirement System (FRS) in accordance with Florida law. The County will oversee and administer the MPO staff's participation in FRS by deducting and remitting to FRS all required employee contributions. The County will make reports and remit employer required contributions to the FRS. Only the MPO's Executive Director will be eligible for FRS senior management service class status.

7.6 Staff Liability Insurance. MPO staff, at the MPO's cost and expense, may be included within the terms of the automobile, general liability and workers compensation insurance programs purchased by the County to provide such coverage for County's general employees while acting within the course and scope of their employment, and will be covered under such plans to the same extent and under the same terms and conditions as the County's general employees.

## **SECTION 8. BUDGET AND REIMBURSEMENT.**

8.1 Budget. The MPO shall annually prepare a budget necessary to perform the functions of the MPO as mandated by federal and state law. The MPO budget shall provide the following:

(a) The MPO's budget shall be prepared so as to cover the costs and expenses of all support services, including but not limited to the office space, facilities, equipment, supplies, services, contractors, personnel, staff and any other incidental matter or service provided or to be provided by the County to the MPO pursuant to this Agreement. The budget shall also include revenue payable to the MPO by the County for all support services the MPO provides to the County pursuant to this Agreement.

(b) The MPO shall have prepared and submitted its annual budget to the appropriate state and federal agencies for approval no later than July 1<sup>st</sup> of each calendar year. The MPO shall submit its budget to the County in accordance with the timetable established by County's Administrator each calendar year. The parties acknowledge that their budget cycles do not coincide, and the need of each to work cooperatively with the other to address their budget needs. The County acknowledges the MPO's need for the MPO's annual budget to coincide with its UPWP and the MPO acknowledges the County's inability to commit funds for the use or benefit of the MPO until the County's budget has been approved. The MPO may be required to provide forms and documents in the same manner required of the County's departments. In addition, the MPO may be required to submit additional documents or information needed by County related to its receipt and/or expenditure of County, state, and federal funds and its status as an entity separate from that of the County.

(c) The MPO Governing Board shall approve the MPO's annual operating budget and UPWP. The County will not be required to approve or review the MPO's budget, but must review and approve expenditures of County funds that are furnished to or used as matching funds by the MPO, or advanced to the MPO, with reimbursement to the County to follow.

(d) Changes to the MPO's budget shall be reviewed and approved by the MPO Governing Board unless such changes affect the County's budget. MPO staff shall provide appropriate information to County's Department of Financial Management & Budget (OFMB) to have changes

processed. Budget amendments that affect the County's budget must be reviewed and approved by County. The County may not approve or deny changes to the MPO budget that have no impact upon the County's budget. A transmittal order from the MPO signed by the MPO's Executive Director with specific directions shall be sufficient to validate adoption of a budget or an amendment thereto.

(e) It is the responsibility of the MPO to ensure that all applicable state, federal and local laws, rules, regulations, guidances, policies and procedures are followed in preparing the MPO's annual budget. If the County's Department of Financial Management and Budget (OFMB) determines the budget is inconsistent with applicable state, federal and local laws, rules, regulations, guidances, policies and procedures, it will notify the MPO of such inconsistency and the MPO's Executive Director or other appropriate staff will meet with OFMB staff to resolve the inconsistency as soon as reasonably possible.

8.2 Reimbursement of Fund Advances. The MPO shall reconcile its accounts by promptly submitting invoices to the appropriate federal, state and local grantors for program expenditures and shall promptly forward reimbursement payments to County upon receipt or it may direct that such payments be transmitted to County if possible.

## **SECTION 9. COMPENSATION AND COSTS.**

9.1 Compensation to the MPO. The County will compensate the MPO for the performance of services requested by County as described in Section 6 of this Agreement. The MPO shall track all hours of service and prepare and submit a monthly invoice to the County for the services or as otherwise agreed to in a particular work order. The MPO shall describe the services provided, identify the costs associated with the services, including the actual hourly costs associated with the provision of the services, identify the department for which the services were provided and the individual who authorized the services, and provide other information requested by County to document the delivery and receipt of services and to enable the Clerk to perform her pre-audit function. If requested by County, the MPO will provide progress reports and deliverables to the County in accordance with a schedule agreed to by the MPO's Executive Director and the applicable County department head. The County shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes section 218.70, *et seq.*

## **SECTION 10. ADVANCEMENT AND REIMBURSEMENT OF FUNDS.**

10.1 Line of Credit. At no cost to the MPO, the County will provide County funds to the MPO to be used to pay certain costs or expenses not reimbursable by federal or state agencies; provided, that such costs or expenses are included within the MPO's budget approved by the County. County also agrees to advance certain funds included within the MPO's budget approved by the MPO which are to be reimbursed by federal or state agencies. All funds advanced by the County shall be repaid from time to time by the MPO from state and federal transportation planning grants that the MPO receives as a metropolitan planning organization. The MPO shall prepare and submit invoices in a timely manner for reimbursement of expenses from the MPO's state and federal transportation planning grants. All reimbursements shall be promptly deposited with the County upon receipt by the MPO and credited to any outstanding MPO line of credit balance. The County will not, within a particular fiscal year, penalize the MPO, limit its line of credit, delay line of credit payments to the MPO, or charge interest or other fees for delayed or disapproved reimbursements from state or federal sources provided,

however, that the failure of the MPO to receive reimbursement shall not excuse or release the MPO from its obligation to repay to the County the advanced funds.

#### **SECTION 11. TERMINATION.**

11.1 Termination for Cause. 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, the non-performing party shall be notified in writing of its non-performance and provided with no less than six (6) months to cure its non-performance. In the event the non-performing party has not cured its breach within the time period specified, the other party may terminate this Agreement upon no less than six (6) months' additional written notice to the non-performing party of its intent to terminate and shall specify in such notice the effective date of its termination.

11.2 Termination for Convenience. Either party may terminate this Agreement for convenience by providing written notice to the other party at least one (1) year prior to the date that this Agreement is proposed to be terminated.

11.3 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 thirty (30) days), all records held by it with respect to this Agreement in accordance with Florida law regarding the transfer of public records to a successor custodian. The County shall release all funds of the MPO then held by the County after the County applies the funds to any outstanding amounts owed to the County. The County shall only be responsible for payment for services provided prior to the effective date of termination. 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 have no further continuing effect and the parties will not be obligated to each other, except those obligations noted as surviving termination, those duties or responsibilities to be carried out upon or after termination, and those duties or responsibilities arising on or before the date of termination which have not been completed and are of a continuing nature or character.

#### **SECTION 12. RECORD-KEEPING AND RETENTION.**

12.1 The MPO 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 MPO 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.

#### **SECTION 13. LIABILITY INSURANCE.**

13.1 The MPO may provide, at its expense, general liability and errors and omissions insurance for the MPO Governing Board. The MPO shall provide, at its own expense, any additional insurance as may be required by the County related to the MPO's activities under this Agreement including, but not limited to, the MPO's use of any County facilities, equipment, personnel or services.

## **SECTION 14. INDEMNIFICATION.**

14.1 (a) To the extent permitted by law, the MPO shall indemnify and hold harmless the County and its officers, servants, agents, employees and volunteers from and against all claims, damages, losses and liabilities, including attorney's fees and costs, and the fees and costs of appeals, arising out of the MPO's activities and services provided under this Agreement, to the extent of the liability of the MPO, where the claim, damage, loss, or liability is caused in whole or in part by the MPO or any of its subcontractors, officers, servants, agents, employees or volunteers. The MPO's indemnification obligation shall be limited to not more than \$300,000 in the aggregate or such liability limits established by law.

(b) To the extent permitted by law, the County shall indemnify and hold harmless the MPO and its agents and employees from and against all claims, damages, losses and liabilities, including attorney's fees, arising out of the County's activities and 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 officers, servants, agents, and employees not assigned to the MPO, or volunteers. The County's indemnification shall be limited to not more than \$300,000 in the aggregate or such liability limits established by law.

(c) The parties acknowledge specific consideration has been exchanged for this provision. Nothing herein shall be construed as a waiver of a party's sovereign immunity or a party's assumption of liability for the negligence or willful misconduct of the other. Nothing herein shall waive the liability limits of Section 768.28, Florida Statutes.

## **SECTION 15. FEDERAL PARTICIPATION AND USE OF FEDERAL FUNDS.**

15.1 Federal Participation. It is understood and agreed by the parties that in order to permit MPO 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 Agreement.

15.2 Use of Federal Funds. (a) The MPO and the County agree that no federal appropriated funds in connection with 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.

(b) 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."

(c) In accordance with 49 CFR §20.110 and 31 U.S.C. §1352, the parties agree to file a

certification and disclosure form upon award of any federal contract, grant, or cooperative agreement exceeding One Hundred Thousand Dollars (\$100,000).

#### **SECTION 16. ASSET MANAGEMENT.**

16.1 All equipment and supplies purchased by the MPO with federal and/or state grant funds are the property of the MPO. The County shall have no authority over the MPO's assets and inventory thereof. The County shall have authority over the MPO's assets and inventory purchased with County funds. The MPO shall adopt and implement an asset management program that will address the tracking and annual inventory of items required by and in accordance with state and federal law.

#### **SECTION 17. CONTRACT MANAGEMENT AND LEGAL SERVICES.**

17.1 Contract Management. The MPO shall maintain all of its contracts. All contracts are approved by the MPO Governing Board and will not be included within the County's contract management system.

17.2 Legal Services. (a) County's Office of County Attorney ("County Attorney") will provide legal services to the same extent such services are provided to the County's departments, divisions, and boards in legal matters relating to their official responsibilities. The County Attorney shall not provide legal services in the event of a dispute between the County and the MPO or where the provision of such services would be in violation of the Rules Regulating the Florida Bar unless, upon consultation regarding the advantages, risks, and implications of dual representation and pursuant to Rule 4-1.7(b) of the Rules Regulating the Florida Bar, the MPO and the County consent to dual representation by the County Attorney.

(b) The County Attorney will, under the general direction of the MPO Governing Board and the day-to-day direction of the MPO's Executive Director, provide professional legal representation for the MPO; provided that such direction does not create an ethical conflict for the County Attorney or his or her staff.

(c) In the event this Agreement is terminated for convenience or cause, all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for the County Attorney under this Agreement shall be made available to and for the use of the MPO.

(d) Because representation by an attorney is a personal issue, either party may terminate the services provided by the County Attorney for any reason or for its convenience and without cause by giving no less than one (1) day's written notice to the other, which may include the effective date of termination; provided, however, that in terminating this Agreement, the County Attorney will honor its obligations under the provisions of Rule 4-1.16, of the Code of Professional Conduct of the Florida Bar.

#### **SECTION 18. PROHIBITED INTERESTS.**

18.1 Neither the MPO 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 MPO, either during his or her tenure or for one (1) year thereafter or such additional period of time required by law or agreement, 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 MPO and such disclosure is entered in the minutes of the MPO, the MPO, to the extent provided by law, 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 MPO or the locality relating to such contract, subcontract, or arrangement.

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

No member, officer, or employee of the MPO 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.

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

#### **SECTION 19. PUBLIC ENTITY CRIMES.**

19.1 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 20. UNAUTHORIZED ALIEN WORKERS AND E-VERIFY.**

20.1 Neither party will 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")). A party's employment of unauthorized aliens constitutes grounds for the termination of this Agreement for cause by the non-breaching party.

21.2 (a) Each party has agreements with FDOT which require it to agree and assure FDOT that the U.S. Department of Homeland Security's E-Verify System ("System") will be used to verify the employment eligibility of its employees and the employees of its subcontractors. Accordingly, each party agrees that it will utilize the System, in accordance with law and the regulations applicable to the System, to verify the employment eligibility of employees and that it will require any subcontractor it uses to perform services which it knows will be paid from FDOT funds to verify the employment eligibility of the subcontractor's employees. Each party will provide evidence to the other party and to FDOT that it and its subcontractors have so verified the employment eligibility of all employees, and will do so on forms and in the manner required by the party to whom the verification is provided.

(b) Each party acknowledges that the other party has received and will seek funds from FDOT, and that such funds may be used to pay for services provides under this Agreement. Each party

further acknowledges that FDOT has advised recipients of FDOT funds that it will consider the employment of unauthorized aliens to be a violation of the Immigration and Nationality Act. Each party affirms to the other that it will not knowingly employ unauthorized aliens or take any other act which may cause the other party to be in violation of any term or condition of any agreement either has with FDOT.

(c) The provisions of paragraphs (a) and (b) above shall remain in effect so long as either party is required under its agreements with FDOT or other lawful executive order, rule, or law, to include these obligations in its contracts and subcontracts.

#### **SECTION 21. FEDERAL TAX ID NUMBER.**

21.1 Each party will provide its Federal Tax ID Number to the other upon request.

#### **SECTION 22. TITLE VI.**

22.1 During the performance of this Agreement, each party agrees as follows:

(a) Compliance with Regulations. Each party will comply with the non-discrimination regulations applicable to federally assisted programs of the U.S. Department of Transportation ("U.S. DOT") at 49 CFR part 21, as they may be amended from time to time (referred to hereafter as the "Regulations"). Said Regulations are hereby incorporated into and made a part of this Agreement by reference.

(b) Nondiscrimination. Each party, with regard to the work performed during this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Neither party will participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5 of the Regulations, including employment practices if this Agreement covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontractors, including Procurements of Materials and Equipment. In all solicitations made by either party, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the soliciting or negotiating party of its obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

(d) Information and Reports. Each party shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the FDOT, FHWA, FTA, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a party is in the exclusive possession of another who fails or refuses to furnish this information, each party shall so certify to FDOT, FHWA, FTA, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of a party's noncompliance with the



nondiscrimination provisions of this Agreement, FDOT shall impose such contract sanctions as it or the FHWA, FTA, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

1. Withholding of payments to a party until it complies; and/or
2. Cancellation, termination or suspension of the Agreement, in whole or in part.

(f) Incorporation of Provisions. Each party shall include the provisions of paragraphs (a) through (f) of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Each party shall take such action with respect to any subcontract or procurement as FDOT, FHWA, FTA, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a party becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the party may request FDOT to enter into such litigation to protect the interests of FDOT, and, in addition, the party may request the United States to enter into such litigation to protect the interests of the United States.

(g) As required by 49 CFR §26.13, each party affirms and advises the other that it shall not discriminate on the basis of race, color, national origin, religion, gender, age or disability in the award and performance of any U.S.DOT-assisted contract or in the administration of its Disadvantaged Business Enterprise (“DBE”) program or the requirements of 49 CFR Part 26. Each party shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts.

## **SECTION 23. AUDIT, INSPECTION, AND EQUIPMENT.**

23.1 Each party agrees as follows:

(a) Each party will permit and shall require its contractors to permit the FHWA, FTA, and FDOT authorized representatives to inspect all work, materials, payrolls, records of personnel, invoices or materials, and other relevant data and records; and to audit the books, records, and accounts of the other pertaining to the development and provision of services under this Agreement funded by a federal or state agency. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the FDOT, FHWA, or FTA at all times during the period of a specific UPWP. Copies of these documents and records shall be furnished to the FDOT, FHWA, or FTA upon request.

(b) Equipment. Where federal funds are to be used to provide part or all of the cost of equipment, such expenditures must be identified in the adopted UPWP in accordance with 49 CFR, Part 18, Subpart C, Section 163.01(5)(m), Florida Statutes, and the MPO Program Management Handbook, Section 3.7.8.

(c) Inspector General. Palm Beach County has established the Office of the Inspector General pursuant to the Office of Inspector General, Palm Beach County, Florida Ordinance, as it may be amended from time to time. The Inspector General (“IG”) is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The ordinance requires parties contracting with the County to fully cooperate with the IG. The IG has the power to

subpoena witnesses, administer oaths and require the production of records, and to audit, investigate, monitor, and inspect the activities of the parties, their officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption, waste and fraud. A violation of the ordinance is punishable, pursuant to Section 125.69, F.S., in the same manner as a second degree misdemeanor.

#### **SECTION 24. EQUAL OPPORTUNITY.**

24.1 Each party warrants and represents that all of its employees and applicants for employment are treated equally during employment without regard to race, color, religion, sex, age, national origin, ancestry, disability, marital status, familial status, sexual orientation, or gender identity or expression and that no person shall, on the grounds of race, color, religion, sex, age, national origin, ancestry, disability, marital status, familial status, sexual orientation, or gender identity or expression be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

#### **SECTION 25. CONSTRUCTION OF AGREEMENT.**

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

#### **SECTION 26. GOVERNING LAWS.**

26.1 This Agreement shall be governed, construed and interpreted under the laws of the State of Florida.

#### **SECTION 27. VENUE.**

27.1 Venue for any action brought pursuant to this Agreement shall be in a court of competent jurisdiction in and for Palm Beach County, Florida, or if in Federal court in the U.S. District Court for the 4<sup>th</sup> District of Florida. Any trial shall be non-jury.

#### **SECTION 28. ATTORNEYS' FEES.**

28.1 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 29. SEVERABILITY.**

29.1 Should any section, sentence, clause, or word 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 30. ASSIGNMENT.**

30.1 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, which

may be denied for any reason or no reason. Additional consideration has been given by the parties for this provision.

### **SECTION 31 MODIFICATIONS.**

31.1 This Agreement, together with any exhibits, attachments and schedules, constitutes the entire agreement between the MPO and the County and supersedes all prior written or oral contracts, agreements and understandings, except as provided herein. The MPO's Chair and Executive Director are authorized to enter into MOUs with the County, through its County Administrator, as provided in this Agreement. County's Administrator is authorized to enter into MOUs with the MPO, through either the MPO's Chair or Executive Director, as provided in this Agreement. Said MOUs shall be for the purposes of reducing administrative inconvenience, inefficiencies, or costs and to clarify the parties' duties and responsibilities, except as may be otherwise provided herein. No MOU may amend or necessitate an amendment to either party's budget unless it has first been approved by the MPO's Governing Board and County's Board of County Commissioners.

### **SECTION 32. NOTICE.**

32.1 (a) 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 MPO:

Executive Director  
Palm Beach MPO  
2300 N. Jog Rd, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411

To the County:

County Administrator  
Palm Beach County, Florida  
301 N. Olive Ave, 11<sup>th</sup> Floor  
West Palm Beach Florida 33401

The addressee or address of a party may be changed by providing written notice to the other party.

(b) 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, all if properly addressed as set forth above. 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 33. EXECUTION OF AGREEMENT.**

Section 33.1 This Agreement 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 34. EFFECTIVE DATE.**

Section 34.1 A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

**SECTION 35. NO THIRD PARTY BENEFICIARIES.**

Section 35.1 The parties acknowledge that this Agreement is not intended to be a third party beneficiary contract and neither creates rights in nor confers rights to anyone other than the MPO and County. Nothing contained herein creates a contract of employment between the MPO Executive Director and the County or between any member of the MPO staff and the County. Nothing contained herein creates a contract of employment between the MPO Executive Director or any member of the MPO staff and the MPO Governing Board. Nothing contained herein creates enforceable rights in the employment or continued employment of any MPO staff or the MPO Executive Director.

**(Remainder of Page Intentionally Left Blank)**

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

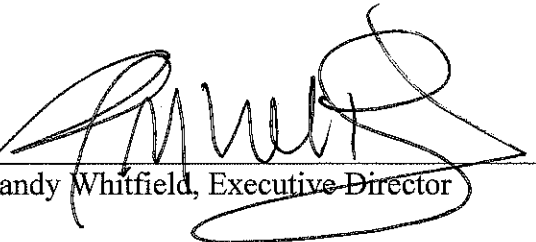
Palm Beach County, Florida, by its  
Board of County Commissioners

Palm Beach Metropolitan  
Planning Organization

By: \_\_\_\_\_  
Steven L. Abrams, Mayor

By:  \_\_\_\_\_  
Susan Haynie, Chair

Attest:  
Sharon R. Bock, Clerk & Comptroller

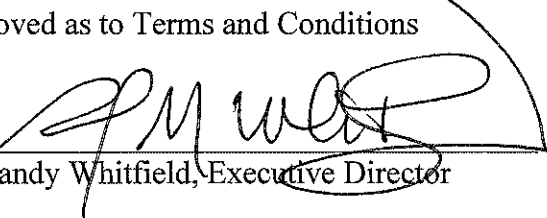
Attest:  
By:  \_\_\_\_\_  
Randy Whitfield, Executive Director

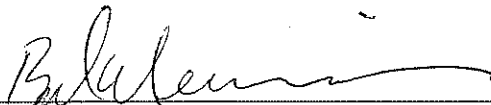
By: \_\_\_\_\_  
Deputy Clerk

Approved this \_\_\_ day of \_\_\_\_\_, 2013.

Approved this 17 day of January, 2013.

Approved as to Terms and Conditions

Approved as to Terms and Conditions  
By:  \_\_\_\_\_  
Randy Whitfield, Executive Director

By:  \_\_\_\_\_  
Brad Merriman  
Assistant County Administrator

Approved as to Form  
and Legal Sufficiency

Approved as to Form  
and Legal Sufficiency

\_\_\_\_\_  
Palm Beach County Attorney

\_\_\_\_\_  
MPO Attorney