

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

THIS INTERLOCAL AGREEMENT, made and entered into this 26 day of Aug , 2010, by and between the Space Coast Transportation Planning Organization, a Metropolitan Planning Organization created and operating pursuant to Section 339.175, Florida Statutes (hereinafter called the "TPO"), and the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter called the "COUNTY").

W I T N E S S E T H

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

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

WHEREAS, the aforesaid Interlocal Agreement was recorded on February 21, 2005, in Official Records Book 5425, Page 144, Public Records of Brevard County, Florida, and re-recorded on May 12, 2006, in Official Records Book 5644, Page 5967, Public Records of Brevard County, Florida, as amended by the First Amendment to the Interlocal Agreement for Creation of the Brevard Metropolitan Planning Organization, as recorded on September 13, 2006, in Official Records Book 5696, Page 8801, Public Records of Brevard County, Florida, as amended by the Second Amendment to the Interlocal Agreement for Creation of the Space Coast Transportation Planning Organization f/k/a Brevard Metropolitan Planning Organization, as recorded on January 8, 2009, in Official Records Book 5906, Page 3023, Public Records of Brevard County, Florida; and

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

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

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

WHEREAS, the TPO is desirous of obtaining certain services from the COUNTY to assist the TPO staff in managing the continuing, cooperative and comprehensive transportation planning process as mandated by State and Federal law; and

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

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

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

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

SECTION 2. TERM. The term of this Agreement shall begin October 1, 2010, and shall extend to and include September 30, 2015. The TPO shall have an option to renew this Agreement for an additional five (5) year term until September 30, 2020. The TPO must provide written notice to the County by April 1, 2015 of its intent to renew this Agreement for an additional five (5) year term terminating on September 30, 2020.

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

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

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

3.3 Meeting Space. As provided in the aforementioned lease agreement, the COUNTY shall provide suitable meeting space (as reasonably determined by the TPO) for the TPO to conduct its advisory and governing board meetings. The TPO shall coordinate with the COUNTY to reserve such meeting and conference rooms. The COUNTY, in accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, shall provide assistance to persons with disabilities needing special accommodations to participate in meetings held on COUNTY property.

The TPO will be permitted to purchase services of the Space Coast Government Television (SCGTV) staff and equipment, for the taping and re-broadcasting of the TPO Governing Board meetings. The cost to the TPO for the purchase from the COUNTY of said services shall be at a rate equal or better than that offered to other local governments including the COUNTY.

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

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

3.6 Purchasing. The COUNTY shall provide the following purchasing services to the TPO: (a) processing purchase order

requests and any applicable changes; (b) approval of TPO vendors; (c) meeting room reservations; and (d) credit card applications and renewals. The TPO shall follow the provisions of Section 287.055, Florida Statutes ("The Consultants' Competitive Negotiation Act"), for the procurement of professional services. The TPO may adopt its own procedures and policies, but shall adhere to all Federal and State laws regarding procurement of services. The TPO may solicit and utilize services independent of the COUNTY's purchasing Office or may utilize its own staff for purchasing of services or material.

3.7 Payroll. The COUNTY shall provide payroll services for the TPO staff and include TPO staff in the processing of bi-weekly payroll. Provided that the TPO presents the COUNTY with required time sheets, the COUNTY shall promptly process the bi-weekly payroll and will authorize the Brevard County Clerk of the Court's County Finance Department to administer and issue the payroll checks, without further action by the County.

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

3.9 Audit. The COUNTY shall include the TPO accounts in an annual accounting and budget audit performed by the COUNTY or Clerk of the Court. TPO funds and accounts shall be included in the COUNTY's Comprehensive Annual Financial Report. Audits shall be conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, and any other standards or requirements as required by Federal or state agencies having jurisdiction over TPO funds and as required from time to time by the FDOT, the FHWA, and the FTA.

The COUNTY and the TPO agree to provide to each other and any other third party all information necessary to complete said audit.

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

3.10 Communications. The COUNTY shall provide the TPO with use of the COUNTY's telephone communication system, including functions such as the message system, phone configurations, local and long distance calling and provide any necessary repairs to the system. The COUNTY will permit the TPO to have access to and use of the local cable broadcasting network, as provided in the Brevard County Government Center. Charges for Communications shall be calculated annually through the COUNTY's indirect cost plan, with new rates effective October 1st of each year. The indirect cost plan calculations shall be reviewed and approved by TPO staff prior to approval and adoption by the COUNTY. The indirect cost plan shall comply with all applicable State and Federal regulations and follow OMB Circular A-87. The annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the TPO through the COUNTY Systems Applications and Products ("SAP") financial system on a monthly basis. For purposes of this Agreement the SAP financial system consists of various modules, including the Financial Accounting (FI) module, Controlling (CO) module, Production Planning (PP) module, Materials Management (MM) module, and the Sales and Distribution (SD) module.

3.11 Technical Support. The COUNTY Information Technology Department (the "ITD") shall provide the TPO with certain technical support services. Such services will include trouble-shooting of computer failures (hardware and software) and use of COUNTY networks including Microsoft Exchange Server, Internet and other networks that enhance the technical capabilities of the TPO.

- a. Equipment. The TPO Governing Board shall approve all procurement of computer hardware and software in excess of Five Thousand Dollars (\$5,000) to be used by TPO staff and shall obtain approval from the FHWA as outlined in the TPO's Unified Planning Work Program (UPWP). Procurement of hardware and software less than Five Thousand Dollars (\$5,000) shall be approved by the TPO Executive Director. The TPO shall coordinate with the COUNTY to ensure equipment is compatible with the COUNTY system prior to purchase. The ITD shall not be responsible for providing services on software or equipment purchased by the TPO that was not approved prior to purchase by the ITD.
- b. Agreement. Within one (1) year of the execution of this Agreement, the TPO and the ITD shall enter into an agreement defining the TPO use of the COUNTY system and support functions. This agreement shall not be a boilerplate or form agreement and shall be tailored to meet the needs and requirements of the TPO.

- c. Services. Except for the initial setup of the information/computer system which has already occurred, the COUNTY shall promptly (within not more than forty-eight (48) hours) provide the on-going maintenance, installation, upgrades, setup or reinstallation resulting from the TPO offices being moved or relocated within the Brevard County Government Center.

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

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

- d. Indirect Cost Plan. Charges for services provided by the ITD shall be calculated annually through the COUNTY indirect cost plan, with new rates effective October 1st of each year. The indirect cost plan calculations shall be reviewed and approved by TPO Executive Director prior to approval and adoption by the COUNTY. The indirect cost plan shall comply with all applicable State and Federal regulations and follow OMB Circular A-87. The annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the TPO through the COUNTY SAP financial system on a monthly basis. Charges for services by the ITD, including any increase, shall be similar to and shall not exceed charges to other COUNTY departments.

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

SECTION 4. TPO SERVICES.

4.1 Services to be Performed. Upon the effective date of this Agreement, the COUNTY Transportation Planning Office shall be dissolved and the duties of said Office shall be performed by the TPO. The TPO shall provide the following transportation planning services to the COUNTY:

- a. State and Federal Funds. All required transportation planning and programming activities necessary to maintain Brevard County's eligibility to receive Federal and State transportation funds.
- b. Crash Data. The TPO shall provide technical resources and data, as requested by the COUNTY.
- c. Traffic Counts. The TPO shall annually collect traffic counts on various roadways throughout Brevard County through the use of contracted services. The TPO shall provide these counts to the COUNTY as they become available.
- d. Pedestrian Facilities Planning. TPO staff shall support and assist the COUNTY with the planning and implementation of pedestrian facilities throughout the COUNTY. This includes, but is not limited to, review of site plans, field reviews, multi-jurisdiction coordination and public involvement.
- e. Bicycle Facilities Planning. TPO staff shall support and assist the COUNTY with the planning and implementation of bicycle facilities throughout the COUNTY. This includes, but is not limited to, field reviews, multi-jurisdiction coordination and public involvement.
- f. Trail Facilities Planning. TPO staff shall support and assist the COUNTY with the planning and implementation of trail facilities throughout Brevard County. This includes, but is not limited to field reviews, multi-jurisdiction coordination and public involvement.
- g. Public Involvement/Outreach. The TPO staff shall support and assist the COUNTY with reaching out and educating the public on transportation issues. Services shall include, but not be limited to, presentations and attendance at public meetings and special events, and dealing with public inquiries and requests/complaints.

- h. Development of Regional Impacts. The TPO staff shall support and assist the COUNTY with review of development of regional impacts (DRIs). Services include review and comment as relates to transportation elements.
- i. Traffic Impact Studies. TPO staff shall provide support and assist the COUNTY with the review of traffic impact studies on COUNTY facilities.
- j. Inter-department Coordination. TPO staff shall provide support and assist the COUNTY with inter-department coordination of transportation planning programs and projects. The COUNTY departments to be involved in the inter-department coordination include, but are not limited to, Planning and Zoning, Public Works, Parks & Recreation, and Natural Resources.
- k. Governmental Coordination. TPO staff shall coordinate with other modal agencies, such as the FDOT and the East Central Florida Regional Planning Council, on transportation issues and projects.
- l. Agency Transportation Inter-governmental Coordination. The TPO staff will coordinate and communicate on behalf of the COUNTY with local government entities, modal agencies and applicable regional, State and Federal agencies to develop and implement a comprehensive, coordinated and continuous transportation planning process.
- m. Insight and Updating on Transportation Legislation. The TPO staff shall be current on developments in transportation planning programs, services, and legislation and shall provide technical support to the COUNTY and other local government agencies.
- n. Legislative Recommendations. The TPO shall compile legislative recommendations for the COUNTY to submit to the Brevard County legislative delegation and other regional bodies relating to transportation planning and transportation-related aspects of comprehensive planning. The TPO shall consult and coordinate with the COUNTY and other local governments on assessing the impacts or opportunities presented by State and Federal legislation and policy initiatives.
- o. Comprehensive Planning. The TPO shall assist the COUNTY and other local governments in developing elements of their Comprehensive Plans so that such plans will be as

consistent as possible with the TPO Transportation Plan as required by State statute.

- p. Other. Any additional tasks or services requested to be performed by the TPO for the COUNTY, not delineated in this Agreement, shall be performed upon separate written agreement of the parties.

4.2 Limitation on Work to be Performed. The COUNTY understands and agrees that the TPO shall perform any of the foregoing services for the COUNTY during the term of this Agreement. The TPO shall only perform these tasks at the hourly rate schedule attached in **Attachment "A"** and up to the annual work effort compensation allocated by the COUNTY as described in Section 7.1.

SECTION 5. PERSONNEL.

5.1 TPO Staff. The TPO Executive Director shall serve under the direction, supervision and control of the TPO Governing Board. The TPO Executive Director, with the consent of the TPO Governing Board, shall employ such personnel as may be necessary to perform the functions of the TPO. The COUNTY shall have no management or control over the TPO staff.

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

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

5.2 Personnel Policies. The TPO shall from time to time define job descriptions, classifications, pay grades, salary ranges, and leave accruals for each of its TPO staff positions. The retention, supervision, discipline, evaluation and dismissal of TPO employees shall be under the direction of the TPO as described in the TPO Personnel Policies. All Personnel Policies shall be in compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.. Other than as may be specifically set forth herein, the

COUNTY's Merit System Policies and Procedures shall not apply to the staff of the TPO.

5.3 Human Resources. At no cost to the TPO, the TPO may utilize all personnel services offered by the COUNTY Human Resources Office. Such personnel services include the recruitment, hiring, and applicable pre-employment physical and drug testing of TPO employees. The COUNTY shall permit TPO employees, at no cost difference than what is charged to COUNTY employees, to participate in personnel-related training courses and programs. The COUNTY agrees to permit TPO staff to receive the COUNTY's unemployment compensation benefits, on the same basis the COUNTY offers such benefits to COUNTY employees.

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

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

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

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

5.5 Insurance. The TPO may purchase on behalf of its employees and participate in the automobile, general liability and workers

compensation insurance programs purchased by the COUNTY for the benefit and protection of its officers and employees. Any TPO employee, while acting in the course and scope of his/her employment for the TPO, shall be considered covered under such plans to the same extent and under the same conditions as a COUNTY employee.

SECTION 6. BUDGET AND REIMBURSEMENT.

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

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

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

SECTION 7. COMPENSATION AND COSTS.

7.1 Compensation to the TPO.

- a. The COUNTY agrees to compensate the TPO for services based on direct hourly rates as outlined in the rate schedule **ATTACHMENT "A"**, attached hereto and made a part hereof by reference. The annual work effort plan and the budget allocation as described in sub-section b. below may be revised not more than once every one hundred eighty (180) days by written agreement between the TPO Executive Director and the Brevard County Manager. The hourly rates in **ATTACHMENT "A"** may be proposed for revision by the TPO and agreed to by the County Manager not more often than once every one hundred eighty (180) days by written agreement. The TPO reserves the right to add or delete staff and staff positions from time to time to be used in performing work for the COUNTY as may meet the needs of the TPO. The County will be advised of such changes. The TPO shall track all hours of service and prepare and submit a monthly invoice to the COUNTY for services performed. The TPO shall provide a progress report to the COUNTY on a mutually agreed upon in writing schedule. The COUNTY shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes section 218.70, et seq.
- b. Compensation by the COUNTY to the TPO for the annual work effort performance of tasks in Section 4 of this Agreement shall be Sixty Thousand Dollars (\$60,000) minus the FTA grant local match as calculated in Section 7.5 below, for the COUNTY's Fiscal Year October 1, 2010 through September 30, 2011, without prior approval by the TPO Executive Director. For all Fiscal Years commencing after September 30, 2011, the annual work effort plan and budget allocation for transportation planning work outlined in Section 4.1 of this Agreement to be performed for the COUNTY by the TPO shall be agreed to from time to time in writing; providing, that if no agreement is reached, the annual work effort budget shall be Sixty Thousand Dollars (\$60,000) for hourly billable charges for service and expenses and for the FTA Section 5303 grant local match requirement.

- c. In the event that this amount is expended prior to the end of the COUNTY's Fiscal Year, TPO staff will coordinate with the COUNTY on any necessary budget amendments and negotiation of requested work, which may be otherwise agreed to by the TPO Executive Director and the Brevard County Manager.
- d. Any additional task(s) requested by the COUNTY to be performed by the TPO for the COUNTY, not delineated in this Agreement, shall be performed upon separate written agreement of the parties. Subject to a budget allocation increase to the TPO by the COUNTY, any additional tasks requested shall follow the rate schedule and annual work effort as described in **ATTACHMENT "A"**. The parties agree that if the TPO does not have adequate time and/or staffing resources, the TPO may, upon notice to the COUNTY, decline performance of additional work effort.
- e. The COUNTY is exempted from payment of Florida state sales and use taxes and Federal Excise tax. If at anytime, the COUNTY shall be subject to Florida state sales and use taxes and Federal Excise tax, the COUNTY shall be billed and shall pay the same as it shall be applicable to the TPO charges for service. To the extent that the TPO is not exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the TPO to suppliers for taxes on materials used to fulfill its contractual obligations with the COUNTY, the COUNTY may be called upon to reimburse the TPO for said charges. The TPO shall not use the COUNTY's exemption number in securing such materials or services

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

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

COUNTY shall reimburse these costs only upon documented third party vendor charges and receipts.

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

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

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

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

7.5 Federal Transit Administration Grant Match. The COUNTY shall provide the local match requirements for the FTA grants (currently approximately \$20,000 per year). The actual match amount is currently calculated annually at ten percent (10%) of the full FTA 49 U.S.C. 5303 annual grant allocation. The match enables the TPO to secure FTA funding that is used to support bicycle/pedestrian and trail planning and education programs, Space Coast Area Transit studies and transportation and operational planning support such as Intelligent Transportation Systems planning. The match amount shall be provided to the TPO through use of the COUNTY's SAP financial program. The COUNTY's local match shall be provided at such time and in such amount as needed by the TPO. For planning purposes, the COUNTY is advised that the local match is usually provided on a quarterly basis.

7.6 Transportation Disadvantaged Planning Grants. The TPO shall transfer and the COUNTY agrees to provide the administration,

operations and funding for the State transportation disadvantaged planning grants awarded to the TPO.

7.7 Line of Credit. At no cost to the TPO, the COUNTY agrees to provide the TPO with an annual "line of credit" for each COUNTY fiscal year of up to Three-Hundred Thousand Dollars (\$300,000), for operating expenses. The line of credit shall be repaid from time to time by the TPO from State and Federal transportation planning grants that the TPO receives as a metropolitan planning organization. The TPO shall prepare and submit invoices in a timely manner for reimbursement of expenses by the TPO's State and Federal transportation planning grants. Such reimbursement shall be promptly deposited with the COUNTY upon receipt by the TPO and credited to any outstanding TPO line of credit balance. The COUNTY shall not penalize the TPO, limit its line of credit, delay line of credit payments to the TPO, or charge interest or other fees for delayed or disapproved reimbursements from State or Federal sources.

7.8 Concurrency Support. The COUNTY agrees to promptly collect and forward to the TPO, concurrency review fees as approved and adopted by the Board of County Commissioners on November 18, 2003, Resolution No. 03-283. Concurrency fees are used for support services the TPO Staff provides to the COUNTY as outlined in Section 4, subsections (c), (h), and (i) above.

SECTION 8. TERMINATION.

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

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

8.3 Termination- Records and Payment. Upon termination of this Agreement, each party shall turn over to the other party within a reasonable period of time (not to exceed 30 days) all records held by it with respect to this Agreement. The COUNTY shall release all funds of the TPO then held by the COUNTY after the COUNTY applies the funds to any outstanding amounts owed hereunder to the COUNTY. The COUNTY shall only be responsible for payment for services provided prior to the effective date of termination, or the date

upon which the TPO received notice of the termination of this Agreement, whichever shall be later in time. The parties agree that neither party waives any of its rights to seek damages of any kind against the other party in the event of any default of any of the terms hereunder. After termination, this Agreement shall be of no further continuing effect, and the parties have no obligations to each other hereunder, except those noted as surviving termination, those duties and responsibilities to be carried out upon or after termination, and those duties or responsibilities arising on or before the date of termination.

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

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

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

The COUNTY shall indemnify and hold harmless the TPO and its agents and employees from and against all claims, damages, losses and liabilities, including attorney's fees, arising out of the COUNTY's

services provided under this Agreement to the extent of the liability of the COUNTY, where the claim, damages, or loss is caused in whole or in part by the COUNTY or its subcontractors, agents or employees.

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

SECTION 12. FEDERAL PARTICIPATION AND USE OF FEDERAL FUNDS.

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

12.2 Use of Federal Funds. The TPO and the COUNTY agree that no Federal appropriated funds in connection with of this Agreement have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any non-federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying".

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

SECTION 13. ASSET MANAGEMENT. All equipment and supplies purchased by the TPO with Federal and/or state grant funds are the property of the TPO. The COUNTY shall have no authority over the TPO's inventory. The TPO shall adopt and implement an asset management

program that will address the tracking and annual inventory of items required under state and Federal law.

SECTION 14. CONTRACT MANAGEMENT AND LEGAL SERVICES.

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

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

SECTION 15. PROHIBITED INTERESTS. Neither the TPO nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement in connection with this Agreement or any services included or planned to be performed pursuant to this Agreement, in which a member, officer, or employee of the TPO, either during his or her tenure or for one (1) year thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquired or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed to the TPO and such disclosure is entered in the minutes of the TPO, the TPO may waive the prohibition contained in this paragraph; provided, that any such present member, officer, or employee shall not participate in any action by the TPO or the locality relating to such contract, subcontract, or arrangement.

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

No member, officer, or employee of the TPO either during his or her tenure or for one (1) year thereafter shall have any interests, direct or indirect, in this contract or the proceeds thereof.

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

SECTION 16. PUBLIC ENTITY CRIMES. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a

public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

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

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

SECTION 19. NONDISCRIMINATION.

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

19.2 Nondiscrimination. The TPO, with regard to the work performed by it after award and prior to completion of the contract work will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of contractors and subcontractors, including procurements of material and leases of equipment. The TPO will not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the contract covers a program set forth in 49 CFR part 21, Appendix B.

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

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

The TPO's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in the Planning Funds agreement between the TPO and the FDOT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the TPO's agreement with the FDOT. Upon notification to the TPO of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

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

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

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

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

SECTION 25. ASSIGNMENT. This Agreement and the services to be provided hereunder shall not be assigned, sub-contracted, or sublet

by either party without the express written permission of the other party.

SECTION 26. MODIFICATIONS. This Agreement, together with any attachments and schedules constitutes the entire agreement between the TPO and the COUNTY and supersedes all prior written or oral contracts, agreements and understandings. This Agreement and any attachments may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto.

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

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

With a copy to:
Paul Gougelman, General Counsel
Space Coast TPO
900 East Strawbridge Avenue
c/o City Attorney's Office, 5Flr
Melbourne, FL 32901

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

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

The person or address may be changed by providing written notice to the other party. Notice shall be deemed to have been given upon receipt, if hand delivered, upon deposit with a recognized overnight courier, or within five (5) days after deposit in the U.S. certified mail. If the last day for giving any notice falls on a Saturday, Sunday, or post office holiday, the time is extended to the next day that is not a Saturday, Sunday, or post office holiday.

SECTION 28. EFFECTIVE DATE. This Agreement shall be effective upon its filing with the Clerk of the Circuit Court of Brevard County, Florida.

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

ATTEST:

[Signature]

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

[Signature]

Mary Bolin, Chairman

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

As Approved by the Board on: 8-26-10

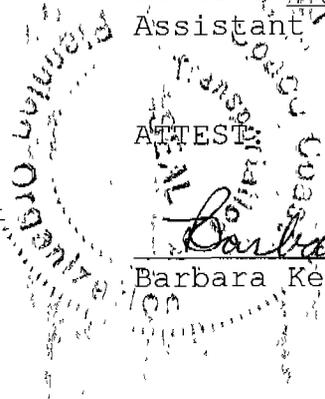
ATTEST:

[Signature]
Barbara Kelly, TPO Clerk

SPACE COAST TRANSPORTATION
PLANNING ORGANIZATION (TPO)

[Signature]
Larry Schultz, Chairman

As Approved by the Board on: 7-8-10



Attachment "A"

Rate Schedule

The Board of County Commissioners of Brevard County, Florida (the "COUNTY") agrees to compensate the Space Coast Transportation Planning Organization (the "TPO") for services, as provided and described in this Interlocal Agreement, based on direct hourly rates as outlined below. The TPO shall track all hours of service and prepare and submit a monthly invoice to the COUNTY for services performed. The COUNTY shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes section 218.70, *et seq.* The parties agree the rates listed in this Attachment may be revised not more than once every one hundred eighty (180) days by written agreement between the TPO Executive Director and the Brevard County Manager.

Professional Classification	Hourly Rate*
TPO Executive Director	\$76.24
Transportation Planner III	\$45.21
Special Projects Coordinator III	\$42.22
Transportation Program Specialist	\$40.42
Special Projects Coordinator II	\$35.44
TPO Clerk	\$34.66
TPO Administrative Secretary	\$26.84

*Hourly Rate includes: Salary and Benefits, Overhead, Indirect

The foregoing hourly rate is for Fiscal Year 2010/2011, October 1, 2010 through September 30, 2011.