

RETURN TO:
Marie Perfection, Agency Clerk
Tangerine Metropolitan Planning Organization
21 Main St.
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PREPARED BY:
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INTERLOCAL AGREEMENT FOR SERVICES
BY AND BETWEEN HOST PROVIDER AND
THE TANGERINE TRANSPORTATION PLANNING ORGANIZATION

THIS INTERLOCAL AGREEMENT, made and entered into this ___ day of _____, 2010, by and between the TANGERINE Metropolitan Planning Organization, a Metropolitan Planning Organization created and operating pursuant to Section 339.175, Florida Statutes, and HOST PROVIDER, a _____ of the State of Florida.

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 MPO as the metropolitan planning organization for the PORT GRAPEFRUIT 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 PORT GRAPEFRUIT urbanized area; and

WHEREAS, the aforesaid Interlocal Agreement was recorded on _____, 20__, in Official Records Book _____, Page _____, Public Records of PORT GRAPEFRUIT HOST PROVIDER, Florida, as amended by the First Amendment to the Interlocal Agreement for Creation of the TANGERINE Metropolitan Planning Organization, as recorded on _____, 20__, in Official Records Book _____, Page _____, Public Records of PORT GRAPEFRUIT HOST PROVIDER, Florida; and

WHEREAS, pursuant to Section 339.175(2)(b), Florida Statutes, the

MPO is an independent governmental entity separate and distinct from the HOST PROVIDER; and

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

WHEREAS, the HOST PROVIDER is _____;

COMMENT: This recital sets forth under what authority the HOST PROVIDER exists. For example, if the HOST PROVIDER is a charter HOST PROVIDER, the recital would be worded as follows:

The HOST PROVIDER is a charter HOST PROVIDER 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, pursuant to Section _____, Florida Statutes, the HOST PROVIDER has the authority to contract with the MPO and other governmental entities for the provision and exchange of certain services; and

COMMENT: This recital provides the legal authority by which the HOST PROVIDER may contract with the MPO in this agreement. For example, if the HOST PROVIDER is a HOST PROVIDER, the recital would be worded as follows:

WHEREAS, pursuant to Section 125.01(1)(p), Florida Statutes, the HOST PROVIDER has the authority to contract with the MPO and other governmental entities for the provision and exchange of certain services; and

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

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

WHEREAS, the provision of such services will mutually benefit the parties hereto and the residents of PORT GRAPEFRUIT HOST PROVIDER, 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 MPO by the HOST PROVIDER; to fix the compensation to the HOST PROVIDER for such services; to define the services to be provided to the HOST PROVIDER by the MPO; and to fix the compensation to the MPO for such services, as agreed to by the parties described herein.

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" means and refers to this Agreement as amended from time to time.

(b) "FDOT" means and refers to the Florida Department of Transportation.

(c) "FHWA" means and refers to the Federal Highway Administration, an agency of the government of the United States of America.

(d) "FRS" means and refers to the Florida Retirement System.

(e) "FTA" means and refers to the Federal Transit Administration.

(f) "Governing Board" means and refers to the governing board of the MPO.

(g) "HOST PROVIDER" means and refers to _____ Florida.

COMMENT: In most cases, the HOST PROVIDER will be a county or a city. This agreement impliedly assumes this to be the case.

(h) "ITD" means and refers to the HOST PROVIDER's department that handles information technology, the information technology department.

(i) "MPO" means and refers to the CIRTUS Metropolitan Planning Organization, a Metropolitan Planning Organization created and operating pursuant to Section 339.175, Florida Statutes.

(j) "OMB" means and refers to the Office of Management and Budget, an agency of the government of the United States of America.

(k) "Regulations" means and refers to regulations of the FHWA or the FTA in 23 CFR or 49 CFR.

(l) "UPWP" means and refers to the Unified Planning Work Program as provided for by 23 CFR Part 450. See, e.g., 23 CFR §§ 450.140 and 450.308.

SECTION 3. TERM. The term of this Agreement shall begin October 1, 20__, and shall extend to and include September 30, 20__. The MPO shall have an option to renew this Agreement for an additional five (5) year term until September 30, 20__. The MPO must provide written notice to the HOST PROVIDER by not later than April 1, 20__ of its intent to renew this Agreement for an additional five (5) year term terminating on September 30, 20__.

SECTION 4. HOST PROVIDER SERVICES. The HOST PROVIDER shall provide the following support services to the MPO:

4.1 Office Space. The HOST PROVIDER shall provide the MPO with office space suitable to conduct the MPO's business, subject to the terms and conditions of a separate lease agreement between the HOST PROVIDER and the MPO. Any charges for the office space shall be as provided for in the separate lease agreement between the HOST PROVIDER and the MPO.

4.2 Facilities. The HOST PROVIDER shall provide security for MPO meetings conducted after normal business hours at no charge. The HOST PROVIDER shall provide to the MPO facility services such as janitorial services, pest control, repair and maintenance, repair, or replacement of HVAC systems, etc., as described in the aforementioned lease agreement between the HOST PROVIDER and the MPO. Any charges for security, janitorial services, pest control, repair and maintenance, repair or replacement of the HVAC systems, shall be as provided for in a separate lease agreement between the HOST PROVIDER and the MPO.

4.3 Meeting Space. As provided in the aforementioned lease agreement, the HOST PROVIDER shall provide suitable meeting space (as reasonably determined by the MPO) for the MPO to conduct its advisory and governing board meetings. The MPO shall coordinate with the HOST PROVIDER to reserve such meeting and conference rooms. The HOST PROVIDER, 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 HOST PROVIDER property. Any charges for the meeting space, as well as the location and hours of use of the meeting space, shall be as provided for in a separate lease agreement between the HOST PROVIDER and the MPO.

4.4 Government Television Facilities. The MPO will be permitted to purchase services of the _____ Government Television staff and equipment, for the taping and re-broadcasting of the MPO Governing Board meetings. The cost to the MPO for the purchase from the HOST PROVIDER of said services shall be at a rate equal or better than that offered by the HOST PROVIDER to other local governments including the HOST PROVIDER.

COMMENT: Some counties provide public TV services over the cable system. This is an optional provision in such eventuality. During preparation of this Agreement, FHWA questioned whether the better rate to be provided was intended to be on a county, state or regional basis. The language is intended to mean that the rate charged will be equal to or lower than the rate charged by the Host Provider for television broadcasting services provided by the Host Provider to other local governments.

4.5 Mail Services. The HOST PROVIDER shall authorize the MPO to use the HOST PROVIDER's mail courier service. The MPO 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 MPO mail to the USPS shall be paid by the MPO.

4.6 Finance. The HOST PROVIDER shall create a cost center within the budgetary system of the HOST PROVIDER for the MPO and provide financial management of Federal, State and local monies granted to the MPO 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 and shall provide monthly reconciliations to budget figures, depicting the amount of the MPO budget year that has passed and the amount of each revenue or expenditure account, sub-account, task, or sub-task that has been expended. The HOST PROVIDER shall pay all invoices and billings approved for payment by

the MPO. Any billings to be paid for pursuant to this Agreement must first be approved by the MPO in the manner provided elsewhere in this Agreement.

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

4.8 Payroll. The HOST PROVIDER shall provide payroll services for the MPO staff and include MPO staff in the processing of *weekly/bi-weekly/monthly* payroll. Provided that the MPO presents the HOST PROVIDER with required time sheets, the HOST PROVIDER shall promptly process the *weekly/bi-weekly/monthly* payroll and will authorize the HOST PROVIDER's Finance Department to administer and issue the payroll checks, without further action by the HOST PROVIDER.

4.9 Budget. The HOST PROVIDER shall include MPO revenues and expenditures in the HOST PROVIDER budget system, and will authorize the HOST PROVIDER's Finance Department to pay MPO expenses from appropriated funds subject to reimbursement after approval by the MPO as otherwise provided in this Agreement. Other than providing basic cost information (*i.e.* indirect rates, Information Technology direct charges, FRS, employee health insurance, employee life insurance, *etc.*) to the MPO, the HOST PROVIDER shall have no authority over the approval of the MPO's budget.

4.10 Audit.

COMMENT: Two options for alternative language are presented. Option #1 includes provisions whereby the Host Provider will use a CPA to prepare the audit. Option #2 provides that the MPO will obtain its own audit services.

Option #1:

(a) The HOST PROVIDER shall include the MPO accounts in an annual accounting and budget audit performed by a certified public accountant licensed by the State of Florida to perform accounting audits and reviews. Said accountant shall be selected by the HOST PROVIDER or _____, but the accountant, and individuals designated to actually perform the audit and firm specialists, examination or review, selected must be reasonably acceptable to the MPO. Once selected by the HOST PROVIDER and approved by the MPO, the accountant, and individuals designated to actually perform the audit, examination or review and firm specialists, can only be changed with the express prior written permission of the MPO, which retains the right to approve or reject replacements. The HOST PROVIDER agrees to furnish adequate working space that is well lighted and reasonably comfortable. The HOST PROVIDER during regular business hours will provide at its headquarters where accounting records are regularly maintained all journals, ledgers, check registers, checks, invoices, accounting documentation, and other financial records related to the MPO (the "accounting records"). Said accounting records will be open to the MPO and the MPO's auditors at no additional charge to the MPO and the MPO's auditors, and during regular business hours the HOST PROVIDER shall assure that trained personnel of the HOST PROVIDER are available to promptly answer questions and immediately provide all records necessary to conduct any audit, review, or other examination of MPO-related accounting records. Copies of any MPO-related accounting records shall be made immediately by the HOST PROVIDER to facilitate the audit. Any charges to be made to the MPO or its auditors shall be pre-agreed to in writing between the MPO and the HOST PROVIDER consistent with section 9.2(c) and at the time set forth in section 9.2(c). All MPO-related accounting records shall be regarded as "public records" subject to Chapter 119, Florida Statutes, and as to said public records, no claim of privilege, exemption, or confidentiality shall be made by the HOST PROVIDER against the MPO.

(b) The timeframe to be covered in the audit shall be as defined by the MPO, covering a time period of not less than 365 days. The audit will recognize the MPO as an independent governmental agency separate from and not subordinate to the HOST PROVIDER. The accountant performing the audit will express an opinion of whether the government-wide financial statements and the fund financial statements which collectively comprise MPO's basic financial statements are presented in accordance with generally accepted accounting principles. The accountant performing the audit will also express an opinion on 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 accepted in the United States of America.

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

(d) Upon request by the MPO and at the sole expense of the MPO, the HOST PROVIDER'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 covering such 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 MPOs expense, a review of the systems of internal control structure policies and procedures of the MPO and the HOST PROVIDER as they relate to the MPO and MPO related accounts in order to obtain an understanding of their design and whether they have been placed in operation and to assess control risk.

Upon request by the MPO and at the sole expense of the MPO, the HOST PROVIDER'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. 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., ss. 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.

(e) Progress reports; Appearances.

(1) At the direction of the MPO, the HOST PROVIDER agrees that its accountant may be required to provide periodic progress reports to the MPO or governmental authorities. The HOST PROVIDER's accountant will appear before an Audit Committee or the MPO Governing Board, as directed by the MPO, to present the findings of all reports in summary form.

(2) The HOST PROVIDER agrees that its accountant will immediately notify the MPO's Executive Director and the MPO's Governing Board 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 by the MPO 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 that of 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.

(f) The HOST PROVIDER and the MPO agree to provide each to the other and any other third party all information necessary to complete said audit. Because the MPO is periodically reviewed by the FHWA for performance and compliance, the HOST PROVIDER shall not undertake an internal or performance related audit of the MPO or request any other entity to perform such audit nor shall the MPO be required to pay for the same without reasonable cause.

(g) If the audit and cost is not pre-approved by the MPO as provided in Section 9.2(c), the MPO shall be responsible for securing its own independent audit at its own cost. The HOST PROVIDER's books and records relating to all MPO revenues and expenses together with support documents shall be open for inspection, audit, and copying during regular business hours to the

MPO's auditor. The HOST PROVIDER shall provide all 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.

COMMENT: During preparation of this agreement, FHWA commented that the FHWA does not regularly "audit" MPOs. As a result, the language has been revised to recognize that there is a "periodic review" of MPOs which comes in a number of different forms, including the review of quarterly invoices and progress reports and through certification reviews for Transportation Management Areas.

Option #2: Host Provider does not arrange for auditing.

The HOST PROVIDER shall *not* be required to provide for or perform an audit or other financial review service for the MPO or MPO-related accounts and records. 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, and the FTA. The HOST PROVIDER agrees to furnish adequate working space that is well lighted and reasonably comfortable. The HOST PROVIDER during regular business hours will provide at its headquarters where accounting records are regularly maintained all journals, ledgers, check registers, checks, invoices, accounting documentation, and other financial records related to the MPO (the "accounting records"). Said accounting records will be open to the MPO and the MPO's auditors at no additional charge to the MPO to the MPO and the MPO's auditors, and during regular business hours the HOST PROVIDER shall assure that trained personnel of the HOST PROVIDER are available to promptly answer questions and immediately provide all records necessary to conduct any audit, review, or other examination of MPO-related accounting records. Copies of any MPO-related accounting records shall be made immediately by the HOST PROVIDER to facilitate the audit. Any charges to be made to the MPO or its auditors shall be pre-agreed to in writing between the MPO and the HOST PROVIDER consistent with section 9.2(c). All MPO-related accounting records shall be regarded as "public records" subject to Chapter 119, Florida Statutes, and as to said public records, no claim of privilege, exemption, or confidentiality shall be made by the HOST PROVIDER against the MPO.

4.11 Communications. The HOST PROVIDER shall provide the MPO with use of the HOST PROVIDER'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 HOST PROVIDER will permit the MPO to have access to and use of the local cable broadcasting network, as provided in the HOST PROVIDER Government Center. The cost plan and calculations shall be reviewed and approved by MPO prior to approval and adoption by the HOST PROVIDER. The cost plan shall comply with all applicable State and Federal regulations and follow OMB Circular A-87 (2 CFR 225.5 et seq.). Any base charges for communications calculated as an annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the MPO by the HOST PROVIDER on a monthly basis.

COMMENT: This is optional language is based on a scenario wherein the MPO is connected to the host provider's communication system.

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

(a) Equipment. The MPO Governing Board shall approve all procurement 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 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 Director will approve lesser individual expenditures from within the overall approved budget. The MPO shall coordinate with the HOST PROVIDER to ensure equipment is compatible with the HOST PROVIDER system prior to purchase. The ITD shall not be responsible for providing services on software or equipment purchased by the MPO that was not approved prior to purchase by the ITD.

COMMENT: FDOT's the Statewide MPO Liaison with the Office of Policy Planning, recommends \$5,000 as the procurement threshold. This is the generally accepted procurement threshold. She asked whether amounts below this should be included in the UPWP. See, e.g., 23 CFR §420.121(e); 49 CFR §18.32(b), (e)(relating to disposition). FHWA commented that it should be made clear that all expenditures using Federal funds needed to be accounted

for and included in the approved UPWP. Clarifying language has been included.

(b) Agreement. Within one (1) year of the execution of this Agreement, the MPO and the ITD shall enter into an agreement defining the MPO use of the HOST PROVIDER 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 MPO.

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

The MPO staff shall follow all HOST PROVIDER policies, administrative orders and procedures relating to the use of the HOST PROVIDER computer network, servers, computer equipment, hardware or software when using HOST PROVIDER equipment and network. Any software or telecommunication licenses obtained by the HOST PROVIDER on behalf of the MPO shall be obtained in the name of the HOST PROVIDER.

COMMENT: During preparation of this agreement, FHWA noted that if the telecommunications licenses are obtained using Federal funds, that the license should belong to the MPO and be in its name. Clarifying language has been included.

Any base charges for ITD services calculated as an annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the MPO by the HOST PROVIDER on a monthly basis.

COMMENT: During preparation of this agreement, FHWA questioned whether the charges shouldn't be included in the overhead charge and included as an indirect cost rate. That could be the case based on the arrangement negotiated by the Host Provider and the MPO. This agreement is merely a working example to assist MPOs in negotiating their own interlocal agreement. Dependent upon what is negotiated, FHWA comments may be exactly correct.

4.13 Travel. All travel by MPO personnel and Governing Board members shall be approved by the MPO Executive Director. All travel by the MPO Executive Director shall be approved by the MPO Governing Board. All travel expenses shall be paid consistent with the provisions of Section 112.061, Florida Statutes. The MPO shall pay

all Class "C" travel expenses, as defined in Section 112.061, in accordance with the policies of the FDOT. All travel funded with Federal funds shall be included in and paid consistent a FHWA approved UPWP. Travel must be conducted 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 HOST PROVIDER shall have no function or responsibility with respect to the travel of any MPO staff or Governing Board members.

COMMENT: During preparation of this agreement, FHWA commented that overall travel amounts and expenditures must be included in the FHWA approved UPWP. Travel must be conducted in accordance with Title 2, Part 225 requirements (formerly OMB A-87). Clarifying language has been included.

SECTION 5. MPO SERVICES.

COMMENT: This is an optional provision. Some MPOs provide services to their host provider or to other local governments. This provision relates to the provision of services by the MPO to the host provider. FHWA cautions that care needs to be taken not to involve the use of *Federal funds* in the performance of services by the MPO are directly related to meeting the MPO's responsibilities and the development of MPO products as specified by Federal law. In the case of Section 5. responsibilities, this is especially important, given the fact that some of these services are not appropriate for use of Federal funds, e.g. - lobbying and legislative recommendation.

5.1 Services to be Performed. Upon the effective date of this Agreement, the MPO shall provide any of the following transportation planning services to the HOST PROVIDER, all as requested by the HOST PROVIDER:

(a) State and Federal Funds. All required transportation planning and programming activities necessary to maintain the HOST PROVIDER's eligibility to receive Federal and State transportation funds.

(b) Crash Data. The MPO shall provide technical resources and data.

COMMENT: FDOT's Statewide MPO Liaison with the Office of Policy Planning, asks "Isn't all crash data available to the MPO now by the FDOT through the FDOT Safety Office?"

(c) Traffic Counts. The MPO shall _____ (insert: annually or other period of time) collect traffic counts on various roadways throughout the HOST PROVIDER through the use of contracted

services. The MPO shall provide these counts to the HOST PROVIDER as they become available.

COMMENT: FDOT's Statewide MPO Liaison with the Office of Policy Planning, notes that for non-Federal highways, the period for collecting counts can vary significantly.

(d) Pedestrian Facilities Planning. MPO staff shall support and assist the HOST PROVIDER with the planning and implementation of pedestrian facilities throughout the HOST PROVIDER's jurisdiction. This includes, but is not limited to, review of site plans, field reviews, multi-jurisdiction coordination and public involvement.

(e) Bicycle Facilities Planning. MPO staff shall support and assist the HOST PROVIDER with the planning and implementation of bicycle facilities throughout the HOST PROVIDER's jurisdiction. This includes, but is not limited to, field reviews, multi-jurisdiction coordination and public involvement.

(f) Trail Facilities Planning. MPO staff shall support and assist the HOST PROVIDER with the planning and implementation of trail facilities throughout the HOST PROVIDER's jurisdiction. This includes, but is not limited to field reviews, multi-jurisdiction coordination and public involvement.

(g) Public Involvement/Outreach. The MPO staff shall support and assist the HOST PROVIDER with out reach to the public and educating the public on transportation-related 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 MPO staff shall support and assist the HOST PROVIDER with review of developments of regional impact (DRIs). Services include review and comment as relate to transportation elements.

(i) Traffic Impact Studies. MPO staff shall provide support and assist the HOST PROVIDER with the review of traffic impact studies on HOST PROVIDER facilities.

(j) Inter-department Coordination. MPO staff shall provide support and assist the HOST PROVIDER with inter-department coordination of transportation planning programs and projects. The HOST PROVIDER departments to be involved in the inter-department

coordination include, but are not limited to, Planning and Zoning, Public Works, and Parks & Recreation.

(k) Governmental Coordination. MPO staff shall coordinate with other modal agencies, such as the FDOT and the Regional Planning Council, on transportation issues and projects.

(l) Agency Transportation Inter-governmental Coordination. The MPO staff will coordinate and communicate on behalf of the HOST PROVIDER 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 MPO staff shall be current on developments in transportation planning programs, services, and legislation and shall provide technical support to the HOST PROVIDER and other local government agencies.

(n) Legislative Recommendations. The MPO shall compile legislative recommendations for the HOST PROVIDER 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 shall consult and coordinate with the HOST PROVIDER and other local governments on assessing the impacts or opportunities presented by State and Federal legislation and policy initiatives.

(o) Comprehensive Planning. The MPO shall assist the HOST PROVIDER 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 statute.

(p) Other. Any additional tasks or services requested to be performed by the MPO for the HOST PROVIDER, not delineated in this Agreement, shall be performed upon separate written agreement of the parties.

5.2 Limitation on Work to be Performed. The HOST PROVIDER understands and agrees that the MPO shall perform any of the foregoing services for the HOST PROVIDER during the term of this Agreement. The MPO 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 HOST PROVIDER as described in Section 7.1.

SECTION 6. MPO PERSONNEL.

6.1 MPO Staff. The MPO Executive Director shall serve under the direction, supervision and control of the MPO Governing Board. The MPO Executive Director, with the consent of the Governing Board, shall employ such personnel as may be necessary to perform the functions of the MPO. The HOST PROVIDER shall have no management or control over, or responsibility for the MPO personnel, employees or staff or the Executive Director. Employment policies, including recruitment, retention, promotion, supervision, discipline, and evaluation of the MPO employees, shall be adopted by and implemented by the MPO.

As an independent agency, the MPO shall have the authority without HOST PROVIDER 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 MPO.

MPO staff shall receive certain HOST PROVIDER employment related benefits as set forth in Paragraph 6.4 below, but shall otherwise not be considered or regarded as employees of the HOST PROVIDER and shall operate independently of the control, supervision and direction of the HOST PROVIDER. The MPO shall perform services under this Agreement as an independent contractor and nothing contained herein shall be construed or interpreted to constitute that the MPO or any of staff to be agents, employees, or representatives of the HOST PROVIDER.

COMMENT: Many MPOs use employees of their host provider. This particular language seeks to provide that the employees are MPO employees under the control of the MPO, and that the employees are host provider employees only to the extent of receiving benefits from the host provider's insurance plan, etc. This may be the most important provision in the agreement. This provision makes it clear that MPO employees are not considered to be employees of the host provider. Some MPOs in dealing with their host provider may not be able to negotiate language as strong as this provision.

6.2 Personnel Policies. The MPO shall from time to time define job descriptions, classifications, pay grades, salary ranges, and leave accruals for each of its MPO staff positions. The retention, supervision, discipline, evaluation, layoff, and dismissal of MPO employees shall be under the direction of the MPO as described in the MPO 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 HOST PROVIDER's career service, civil service, or merit system personnel policies and procedures shall not apply to the staff of the MPO.

COMMENT: The last sentence relates to host providers who have a merit retention or career service program.

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

COMMENT: This provision for purposes of human resources treats MPO employees precisely the same as host provider employees, but as noted in Section 6.1, MPO employees are not considered to be employees of the host provider.

6.4 Employee Benefits. The MPO may purchase, for its employees (as further defined herein), and participate in the HOST PROVIDER's employee benefits programs on the same basis the HOST PROVIDER offers such benefits to the employees and retirees of the HOST PROVIDER. 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 MPO understands and agrees that the employee benefits programs which the HOST PROVIDER may offer will change from time to time. The MPO agrees that benefits can be withdrawn at any time that the HOST PROVIDER similarly withdraws such benefits for rank and file non-union employees of the HOST PROVIDER. If programs are added or removed, the MPO will be advised when changes are contemplated at the same time HOST PROVIDER employees are advised.

The terms of MPO employee participation in the group health plan may require the MPO to enter into a separate agreement relating to

participation in the HOST PROVIDER's group health plan. In such event, the MPO will be required to enter into a separate agreement relating to participation in the HOST PROVIDER's group health plan prior to MPO employee participation in the HOST PROVIDER's group health plan.

Only salaried and hourly employees of the MPO 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.

The MPO will be required to join the FRS. The HOST PROVIDER agrees to administer the MPO's membership in the FRS by making all reports and employer required contributions with MPO funds to FRS on behalf of the MPO, to the same extent as provided to HOST PROVIDER employees. The HOST PROVIDER will allow MPO employees to participate in deferred compensation programs offered through the HOST PROVIDER. The MPO Governing Board shall designate which employees shall be accorded FRS senior management service class status.

COMMENT: The second to the last paragraph is optional and will depend on whether part-time employees under the host provider's health plan may receive health insurance as a benefit. With regard to the last paragraph, MPOs are eligible as separate stand alone organizations to participate in FRS for retirement benefits. The MPO will likely be required to set up its own membership in FRS. The MPO will be required to designate which employee position shall be considered as senior management service class.

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

COMMENT: Again, whether the MPO will be required to obtain its own automobile, general liability and workers compensation insurance or will be able to participate in host provider programs will depend on the agreement that can be researched with the host provider.

SECTION 7. BUDGET AND REIMBURSEMENT.

7.1 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:

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(a) The budget shall be prepared so as to cover all of the costs of support services to be provided by the HOST PROVIDER to the MPO pursuant to this Agreement. The budget shall also include revenue payable to the MPO by the HOST PROVIDER for all support services the MPO provides to the HOST PROVIDER pursuant to this Agreement.

COMMENT: The last sentence relates to those MPOs that utilize Section 5 of this Agreement and that provide services to the host provider.

(b) The budget shall be submitted to the HOST PROVIDER by July 1st of each calendar year, or at a time agreed upon by both parties. The MPO shall not be required to prepare or submit to the HOST PROVIDER forms that are considered part of the HOST PROVIDER's budget process.

COMMENT: FHWA's Lee Ann Jacobs noted that this schedule coincides with the UPWP preparation time frame.

(c) The Governing Board shall approve the MPO's annual operating budget and UPWP. The HOST PROVIDER shall have no authority in reviewing or approving the budget or the UPWP.

(d) Changes to the budget shall be approved by the Governing Board. MPO staff shall provide appropriate information to the HOST PROVIDER's Budget Office to have changes processed. The HOST PROVIDER shall have no authority to approve or deny any changes to the MPO budget. A transmittal order from the MPO signed by the Governing Board Chair or the MPO 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 MPO to ensure that all appropriate Federal and State of Florida budget rules and regulations are followed in preparing their annual budget. If the HOST PROVIDER's Budget Office determines the budget is inconsistent with the Federal or State of Florida budget, law, or rules, the HOST PROVIDER will provide written notice to the MPO and a detailed explanation of why the budget is inconsistent.

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

SECTION 8. COMPENSATION AND COSTS.

8.1 Compensation to the MPO.

(a) The HOST PROVIDER agrees to compensate the MPO 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 MPO Executive Director and the HOST PROVIDER's _____. The hourly rates in Attachment "A" may be proposed for revision by the MPO and agreed to by the HOST PROVIDER's _____ not more often than once every one hundred eighty (180) days by written agreement. The MPO reserves the right to add or delete staff and staff positions from time to time to be used in performing work for the HOST PROVIDER, all as may meet the needs of the MPO. The HOST PROVIDER will be advised of such changes. The MPO shall track all hours of service and prepare and submit a monthly invoice to the HOST PROVIDER for services performed. The MPO shall provide a progress report to the HOST PROVIDER on a mutually agreed upon in writing schedule. The HOST PROVIDER shall remit payment in accordance with the Florida Prompt Payment Act, Florida Statutes section 218.70, *et seq.*

COMMENT: This provision and all of Section 8.1 relate to those MPOs using Section 5 of this Agreement and providing services to the HOST PROVIDER.

(b) Compensation by the HOST PROVIDER to the MPO for the annual work effort performance of tasks in Section 5. of this Agreement shall be _____ Thousand Dollars (\$____,000), for the HOST PROVIDER's Fiscal Year _____, 2010 through _____, 2011, without prior approval by the MPO Executive Director. For all Fiscal Years commencing after _____, 2011, the annual work effort plan and budget allocation for transportation planning work outlined in Section 5.1 of this Agreement to be performed for the HOST PROVIDER by the MPO shall be agreed to from time to time in writing; providing, that if no agreement is reached, the annual work effort budget shall be _____ Thousand Dollars (\$____,000) for hourly billable charges for service and expenses.

(c) In the event that this amount is expended prior to the end of the HOST PROVIDER's Fiscal Year, MPO staff will coordinate with the HOST PROVIDER on any necessary budget amendments and negotiation of requested work, which may be otherwise agreed to by the MPO Executive Director and the HOST PROVIDER's _____.

(d) Any additional task(s) requested by the HOST PROVIDER to be performed by the MPO for the HOST PROVIDER, not delineated in this Agreement, shall be performed upon separate written agreement of the parties. Subject to a budget allocation increase to the MPO by the HOST PROVIDER, any additional tasks requested shall follow the rate schedule and annual work effort as described in Attachment "A". The parties agree that if the MPO does not have adequate time and/or staffing resources, the MPO may, upon notice to the HOST PROVIDER, decline performance of additional work effort.

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

8.2 Costs. Reimbursement of costs incurred by the MPO 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 MPO. The HOST PROVIDER shall reimburse these costs only upon documented third party vendor charges and receipts.

The HOST PROVIDER will not compensate the MPO 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.

COMMENT: This provision relates to those MPOs using Section 5 of this Agreement and providing services to the HOST PROVIDER.

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

Each invoice shall be submitted in one (1) copy in a format that is acceptable to the HOST PROVIDER 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 HOST PROVIDER 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.

COMMENT: This provision relates to those MPOs using Section 5 of this Agreement and providing services to the HOST PROVIDER.

SECTION 9. ADVANCE AND REIMBURSEMENT OF FUNDS.

9.1 Line of Credit. At no cost to the MPO, the HOST PROVIDER agrees to provide the MPO with an annual "line of credit" for each HOST PROVIDER fiscal year of up to _____ Thousand Dollars (\$____,000), for operating expenses. The line of credit 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 by the MPO's State and Federal transportation planning grants. Such reimbursement shall be promptly deposited with the HOST PROVIDER upon receipt by the MPO and credited to any outstanding MPO line of credit balance. The HOST PROVIDER shall not 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. No charges shall be made by the HOST PROVIDER for this lines of credit.

9.2 Reimbursement to HOST PROVIDER.

(a) Compensation to the HOST PROVIDER. In consideration for the services to be provided herein by the HOST PROVIDER as provided in Section 4 of this Agreement, the MPO will budget annually a sum sufficient to reimburse the HOST PROVIDER for all costs incurred by the HOST PROVIDER for Section 4 services, insurance, workers compensation, and direct and indirect costs associated with MPO operations. Actual cost estimates shall be used

with the exception of indirect cost(s), which shall be calculated in accordance with the requirements set forth in 2 CFR 225.5 *et seq.* (Federal OMB Circular A-87).

(b) Reimbursement of HOST PROVIDER and Third Party Costs.

(1) All direct and indirect MPO operating costs or other costs are the sole responsibility of the MPO, and these costs shall be payable to the HOST PROVIDER monthly, in arrears, as reimbursement for all such costs paid by the HOST PROVIDER on behalf of the MPO in the ending month.

(2) The MPO shall be responsible for the review of all invoices submitted to the HOST PROVIDER for payments and shall certify to the HOST PROVIDER that the invoices are accurate and should be paid by the HOST PROVIDER. In the event that the MPO disputes any invoice provided by one of its vendors, including but not limited to the HOST PROVIDER, the MPO shall forward to the HOST PROVIDER only the undisputed amount of the invoice for payment.

(3) The HOST PROVIDER may reasonably prorate and shall be reimbursed for any charges that accrue in the name of the HOST PROVIDER but that were incurred jointly by both the HOST PROVIDER and the MPO.

(4) The HOST PROVIDER shall provide the MPO with a monthly expense report no later than the 15th day of each month, which shall indicate all payments made by the HOST PROVIDER on behalf of the MPO to the HOST PROVIDER and third parties in the prior month (the "Monthly Expense Report"). Upon the MPO's receipt of the Monthly Expense Report from the HOST PROVIDER, the MPO shall review and then submit invoices to the appropriate Federal, state and local grantors for the program expenditures reflected in the Monthly Expense Report within fifteen (15) business days after receipt of the Monthly Expense Report. The Monthly Expense Report shall be in such detail as to clearly enable the reader to identify the expense paid, to whom paid, the date of invoice and payment, and the purpose for which the expense was paid.

(5) The MPO shall forward reimbursement payments to the HOST PROVIDER no later than five (5) business days following the MPO's receipt of such Federal, state, and local grant funds reimbursing the MPO for payment of respective expenses.

(c) The base or recurring monthly, quarterly or yearly recurring cost to the MPO for the services provided in Section 4. of this Agreement for an upcoming fiscal year shall be estimated by the HOST PROVIDER at least 120 days prior to commencement of the HOST PROVIDER's upcoming fiscal year. An annual plan of monthly, quarterly or annual recurring or base charges for Section 4. services, including but not limited to mail service, finance, purchasing, payroll preparation, budget, audit, communications system, ITD, and employee benefits as provided in Section 6.4, together with rates to be charged for both monthly, quarterly or annual recurring or base charges and a general rate structure for non-recurring or base charges shall be calculated annually by the HOST PROVIDER with new rates effective the first day of each fiscal year. Any base charges for services calculated as an annual charge shall be divided into twelve (12) equal installments and shall be directly billed to the MPO by the HOST PROVIDER on a monthly basis.

The proposed plan of charges and calculations supporting the same shall be reviewed and subject to approval by MPO during a period 60 to 120 days prior to the charge and rate schedule becoming effective. The plan shall comply with all applicable State and Federal regulations and follow OMB Circular A-87 (2 CFR 225.5 *et seq.*). Any portions of the plan of charges not disputed by the MPO shall be approved, and the HOST PROVIDER shall be notified of the extent of the MPO's approval. If the MPO takes no action to approve or disapprove the plan of charges or the MPO does not notify the HOST PROVIDER in writing of its approval or denial of the annual plan of charges not more than 60 days prior to the date on which the new schedule of charges would take effect, then the plan or schedule of charges shall be deemed to have been approved by the MPO. Any portion of the plan of charges not affirmatively disapproved by the MPO shall take effect on the first day of the new, upcoming fiscal year.

If the MPO disapproves said plan of charges or portions thereof, the MPO Executive Director and the top administrative official of the HOST PROVIDER shall meet to resolve any differences over the proposed plan of charges and calculations supporting the same. If the MPO Executive Director and the top administrative official of the HOST PROVIDER are unable to resolve their differences over the proposed plan of charges and calculations supporting the same, the Governing Board Chairman, or said Chairman's designee, and a top governing authority of the HOST PROVIDER shall meet to resolve any differences over the proposed plan of charges and calculations supporting the same. If the parties are unable to resolve differences over plan of charges, said plan shall become effective.

COMMENT: The idea is that if disputes over the plan of charges are not resolved, they become effective, and the MPO will have to make a determination whether to increase its service charges to the HOST PROVIDER (if services are being supplied to the HOST PROVIDER pursuant to Section 5) or to terminate this Agreement pursuant to Section 10.2 and make other arrangements.

SECTION 10. TERMINATION.

10.1 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 _____ (__) days after the party's receipt of notice of termination.

COMMENT: This termination for nonperformance provision should be negotiated to not take effect for at least 180 days and preferably 365 days after notice. It will take sometime for a MPO to make other arrangements. This needs to be balanced against non-performance by the host provider. In such cases, the MPO may want the time fuse for termination to be short, but caution is advised, because it will still take time for the MPO to make other arrangements.

10.2 Termination for Convenience. Either the MPO or the HOST PROVIDER may terminate this Agreement for convenience by providing written notice to the other party at least _____ (__) days prior to the date that this Agreement is proposed to be terminated.

COMMENT: See comment following Section 9.1 above.

10.3 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 HOST PROVIDER shall release all funds of the MPO then held by the HOST PROVIDER after the HOST PROVIDER applies the funds to any outstanding amounts owed hereunder to the HOST PROVIDER. The HOST PROVIDER shall only be responsible for payment for services provided prior to the effective date of termination, or the date upon which the MPO 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.

COMMENT: The third sentence is applicable only if Section 5 of this agreement relating to services provided to the HOST PROVIDED is utilized.

SECTION 11. RECORD-KEEPING AND RETENTION. 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. Notwithstanding the foregoing provisions, all books, papers, records and accounts made in connection with this Agreement or otherwise by the MPO 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.

FDOT's Statewide MPO Liaison with the Office of Policy Planning, recommends changing the five (5) year period.

SECTION 12. INSURANCE. The MPO shall provide, at its expense, general liability and errors and omissions insurance for the MPO Governing Board. Insurance for MPO Staff is provided for in Section 6.5 above. The MPO shall provide, at its own expense, any additional insurance required by the HOST PROVIDER, as stated in any lease agreement between the MPO and the HOST PROVIDER.

SECTION 13. INDEMNIFICATION. The MPO shall indemnify and hold harmless the HOST PROVIDER and its agents and employees from and against all claims, damages, losses and liabilities, including attorney's fees, arising out of the MPO's 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, agents or employees. The MPO's indemnification shall be limited to not more than \$300,000 in the aggregate.

The HOST PROVIDER 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 HOST PROVIDER's services provided under this Agreement to the extent of the liability of the HOST PROVIDER, where the claim, damages, or loss is caused in whole or in part by the HOST PROVIDER or its subcontractors, agents or employees. The HOST PROVIDER's indemnification shall be limited to not more than \$300,000 in the aggregate.

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 parties pursuant to Florida Statute 768.28.

COMMENT: Indemnification is a complicated subject, and it is recommended that if indemnification is to occur, it should be limited. MPOs are cautioned to consult with their attorney on this issue.

SECTION 14. FEDERAL PARTICIPATION AND USE OF FEDERAL FUNDS.

14.1 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 section.

14.2 Use of Federal Funds. The MPO and the HOST PROVIDER 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.

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, 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 15. ASSET MANAGEMENT. All equipment and supplies purchased by the MPO with Federal and/or state grant funds are the property of the MPO. The HOST PROVIDER shall have no authority over the MPO's inventory. The MPO 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 16. CONTRACT MANAGEMENT AND LEGAL SERVICES.

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

16.2 Legal Services. The HOST PROVIDER's _____ [County] Attorney shall not provide legal services to the MPO. The MPO shall secure its own legal representation in all matters.

COMMENT: Some MPOs desire to have their HOST PROVIDER provide legal representation. A provision to accomplish this would be as follows:

Legal Services.

(a) The HOST PROVIDER's _____ [County] Attorney shall provide legal services to the same extent as provided to the HOST PROVIDER's _____ [Board of County Commissioners and County employees]. The _____ Attorney shall not provide legal services in the event of a dispute between the HOST PROVIDER 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 HOST PROVIDER consent to dual representation by the HOST PROVIDER's _____ [County] Attorney.

(b) The attorney agrees, under the general direction of the Governing Board and the day-to-day direction of the MPO Executive Director to perform professional legal representation for the MPO.

(c) Compensation - Fees and Expenses.

(1) The MPO shall be billed at a rate of \$____.00 per hour for the legal work performed by an attorney and \$____ per hour for the work of paralegals. Premium rates will not be paid for overtime work.

(2) Routine expenses such as local phone calls, local courier, facsimile copies, routine postage, computerized legal research, local travel expenses, word processing, and clerical or secretarial services are overhead and will not be separately compensated. Photographic copies will be charged commensurate with the general rate charged pursuant to Section 119.07, Florida Statutes. Long distance calls will be billed as charged from the long distance carrier.

(3) Billing for services performed shall be on a monthly basis. Billable hours shall be measured in 6 minute increments. All bills shall denote what attorney conducted the work, a brief explanation of the type of work performed, the date on which the work was performed, and the amount of time expended in performing the work. Reimbursement of costs for such items as exhibits, transcripts and witness fees will be charged at cost to the attorney.

(d) The attorney shall maintain a file(s), available for inspection by the MPO, containing documentation of costs and fees incurred in connection with this Agreement. The file(s) shall be maintained for a period of three (3) years after the cost or fee is incurred by the attorney, unless otherwise notified in writing by the MPO specifying the document to be maintained.

(e) 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 attorney under this Agreement shall be made available to and for the exclusive use of the MPO.

(f) Because representation by an attorney is a personal issue, the MPO may terminate this Section 4.14 for any reason or for its convenience (without cause) by giving written notice to the attorney and to the HOST PROVIDER, including the effective date of termination. The attorney may terminate this Agreement for any reason or for its convenience (without cause) by giving one hundred eighty (180) days' written notice to the MPO, including the effective date of termination; provided, however, that in terminating this Agreement, the attorney shall honor the provisions of Rule 4-1.16, of the Code of Professional Conduct of the Florida Bar.

SECTION 17. PROHIBITED INTERESTS. 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, 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 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.

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.

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 18. 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. See, §297.133(2)(a), Fla.Stat.

SECTION 19. UNAUTHORIZED ALIEN WORKERS. The MPO 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 MPO may immediately terminate this Agreement.

SECTION 20. FEDERAL TAX ID NUMBER. The HOST PROVIDER shall provide to the MPO its Federal Tax ID Number within ten (10) days of the effective date of this Agreement.

SECTION 21. NONDISCRIMINATION.

21.1 Compliance with Regulations. The HOST PROVIDER shall comply with the regulations of U.S. Department of Transportation ("U.S. DOT") relative to non-discrimination in federally assisted programs of the U.S. DOT (Title 46, Code of Federal Regulations), which are herein incorporated by reference and made a part of the Agreement.

21.2 Nondiscrimination.

(a) General. The HOST PROVIDER, with regard to the work performed by it after award and prior to completion of the Agreement work, SHALL COMPLY WITH Title VI of the Civil Rights Act of 1964, as amended, and other applicable Federal statutes, will not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The HOST PROVIDER will not participate either directly or indirectly in the discrimination prohibited by 49 CFR part 21, Appendix B. This Section 20.2 shall not be interpreted as permitting the subcontracting, subletting, or assignment of work hereunder or this Agreement in violation of Section 26, of this Agreement.

(b) Solicitations for Subcontracts, Including Procurement of Material and Equipment. In all solicitations made by competitive bidding or negotiation made by the HOST PROVIDER for work to be performed under a subcontract, including procurement of materials and leads or equipment, each potential subcontractor, supplier or lessor shall be notified by the HOST PROVIDER of obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, national origin, age, disability or familial status.

(c) Information and Reports. The HOST PROVIDER will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit

access to its books records, accounts, other sources of information, and its facilities as may be determined by the FDOT, the FHWA, or the FTA to be pertinent to ascertain compliance with such Regulation, order, and instructions. Where any information required of the HOST PROVIDER is in the exclusive possession of another who fails or refuses to furnish this information, the HOST PROVIDER shall certify to the FDOT, FHWA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(d) Sanctions for Noncompliance. In the event of the HOST PROVIDER's noncompliance with the nondiscrimination provisions of this Agreement, the FDOT shall impose such contract sanctions as it or FHWA or FTA may determine to be appropriate, including but not limited to, withholding of payments to the HOST PROVIDER under the Agreement until the HOST PROVIDER complies; and/or cancellation, termination, or suspension of the Agreement in whole.

(e) The HOST PROVIDER will include the provisions of paragraphs (a) through (e) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The HOST PROVIDER will take such action with respect to any subcontract or procurement as the FDOT, FHWA, or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however that in the event the HOST PROVIDER becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the HOST PROVIDER may request the State to enter into such litigation to protect the interest of the State, and in addition, may request the United States to enter into such litigation to protect the interest of the United States.

(f) As required by 49 CFR §26.13, the HOST PROVIDER is advised that the MPO 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 Disadvantaged Business Enterprise ("DBE") program or the requirements of 49 CFR Part 26. The MPO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

SECTION 22. AUDIT, INSPECTION, AND EQUIPMENT.

(a) The HOST PROVIDER shall permit and shall require its contractors to permit the FHWA, FTA, and the 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 HOST PROVIDER pertaining to the development of the work under this Agreement. 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.

SECTION 23. 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 24. GOVERNING LAWS. This Agreement shall be governed, construed and interpreted under the laws of the State of Florida.

SECTION 25. VENUE. Venue for any action brought pursuant to this Agreement shall be in a court of competent jurisdiction in and for _____ County, Florida, or if in Federal court in the U.S. District Court for the _____ District of Florida, _____ Division. Any trial shall be non-jury.

SECTION 26. 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 27. SEVERABILITY. 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 28. 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, which may be denied for any reason or no reason. Additional consideration has been given by the parties for this provision.

SECTION 29. MODIFICATIONS. This Agreement, together with any attachments and schedules constitutes the entire agreement between the MPO and the HOST PROVIDER 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 30. 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 MPO:
_____, MPO Executive Director
TANGERINE MPO

_____, FL 3_____

With a copy to:
_____, General Counsel
TANGERINE MPO

_____, FL 3_____

To the HOST PROVIDER:
_____, HOST PROVIDER Manager
HOST PROVIDER

_____, FL 3_____

With a copy to:
_____, _____ Attorney
HOST PROVIDER Attorney's
Office

_____, FL 3_____

The addressee or address of a party 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, 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 31. EXECUTION OF AGREEMENT. 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 32. EFFECTIVE DATE. This Agreement shall be effective upon its filing with the Clerk of the Circuit Court of _____, Florida.

COMMENT: Agreements of this type are viewed as interlocal agreement. Pursuant to Section 163.01(11), Florida Statutes, no interlocal agreement shall become effective until it is filed with the Clerk of the Circuit Court.

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

ATTEST:

HOST PROVIDER

As Approved by the Board on: _____

ATTEST:

MPO

As Approved by the Board on: _____