

AGREEMENT FOR PROFESSIONAL STAFF SERVICES  
BY AND BETWEEN THE  
NORTH CENTRAL FLORIDA REGIONAL PLANNING COUNCIL  
AND THE  
METROPOLITAN TRANSPORTATION PLANNING ORGANIZATION  
FOR THE  
GAINESVILLE URBANIZED AREA

THIS AGREEMENT is entered into this 24<sup>th</sup> day of June 2010, by and between the North Central Florida Regional Planning Council (hereinafter referred to as the Planning Council) and the Metropolitan Transportation Planning Organization for the Gainesville Urbanized Area, (hereinafter referred to as the MTPO).

W I T N E S S E T H:

WHEREAS, Rules of the Federal Highway Administration, Title 23 Code of Federal Regulations Parts 450 and 500, and the Federal Transit Administration, Title 49 Code of Federal Regulations Part 613 (hereinafter referred to as the Rules), provide for the designation of a metropolitan planning organization for each urbanized area within each state, by the Governor of each state;

WHEREAS, the Governor of Florida has designated the MTPO as the metropolitan planning organization for the Gainesville Urbanized Area;

WHEREAS, the Planning Council, which is organized and existing under and by virtue of the provisions of Section 163.01, Florida Statutes, has the power to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under Section 163.01, Florida Statutes;

WHEREAS, the Planning Council has in the past, provided the primary staff and technical support for the transportation planning process in the Gainesville Urbanized Area, and presently maintains professional staff to perform such administrative and technical support;

WHEREAS, the Federal Government, under authority of Title 23 United States Code Section 134 and Title 49 United States Code Section 5303, requires that each urbanized area, as a condition to the receipt of federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area; and

WHEREAS, the parties to this Agreement desire to participate cooperatively in the performance, on a continuing basis, of a coordinated, comprehensive transportation planning and programming process to assure that bicycle, highway, transit, pedestrian, rail, water, air and other transportation facilities will be properly located and developed in relation to the urbanized area's overall plan of development.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representation herein set forth, the parties do hereby agree, as follows:

I. PURPOSE

The purpose of this Agreement is to set forth the responsibilities of the Planning Council and the MTPO in performing the professional staff planning functions relative to the transportation planning process for the Gainesville Urbanized Area, and to describe the cooperative procedures under which planning and programming will be carried out.

II. THE PROJECT

The project is defined as the continuing, cooperative and comprehensive transportation planning process for the Gainesville Urbanized Area including the programming of transportation modifications for such area.

III. TECHNICAL RESPONSIBILITIES

- A. The Planning Council, as staff for the MTPO, shall provide professional, technical and administrative assistance in the development of transportation plans and programs which shall include, but not be limited to the following:
  - 1. A Unified Work Program as required by Section 450.308 (b) and (c) of the Rules;
  - 2. A Transportation Plan addressing no less than a 20-year planning horizon, as required by Section 450.322 of the Rules;
  - 3. An annually updated Transportation Improvement Program (TIP) as required by Section 450.324 of the Rules; and
  - 4. An annually updated List of Priority Projects.
- B. The Planning Council shall submit all plans and programs developed under Section III. A. above, to appropriate agencies as directed by the MTPO in order that said plans and programs will be properly adopted and approved.
- C. The Planning Council will maintain files of all plans and programs developed under Section III. A. above.
- D. The Planning Council shall be responsible for providing staff support and coordination for the Technical Advisory Committee and submit plans and programs developed in Section III. A. to said Technical Advisory Committee as directed by the MTPO.

- E. The Planning Council shall be responsible for developing and using a documented participation plan as approved by the MTPO that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

#### IV. ADMINISTRATIVE RESPONSIBILITIES

- A. Pursuant to Section 339.175 (6) (g), Florida Statutes, the Executive Director of the Planning Council shall serve as the Executive Director of the MTPO. The Executive Director of the Planning Council, serving as the Executive Director of the MTPO, shall report directly to the MTPO governing board for all matters regarding the administration and operation of the MTPO.
- B. The Planning Council shall maintain all files for the MTPO and committees, subcommittees and ad-hoc committees created by the MTPO. These files may include the following:
  - 1. All correspondence;
  - 2. All contracts;
  - 3. All meeting minutes;
  - 4. Membership roster and mailing addresses;
  - 5. MTPO bylaws; and
  - 6. All accounting/bookkeeping records.
- C. The Planning Council shall be responsible for arranging all meetings of the MTPO and its related committees to include the following:
  - 1. Preparation and mailing of all meeting notices and agendas to all appropriate persons;
  - 2. Recording the proceedings of all meetings of the MTPO and its related committees, preparing minutes and mailing such minutes out to MTPO members prior to succeeding meetings; and
  - 3. Mailing out all other information pertinent to the transportation planning process.
- D. The Planning Council shall be responsible for performing, on behalf of the MTPO, the financial accounting, bookkeeping and grants management required by the Federal Highway Administration, Federal Transit Administration and Florida Department of Transportation to include the following:

1. Preparation of planning grant applications;
  2. Planning grant administration;
  3. Financial cost control including bookkeeping, recording, timesheets, invoicing and payment of bills;
  4. All progress reporting required by Federal Highway Administration, Federal Transit Administration and the Florida Department of Transportation;
  5. Arranging required public hearings;
  6. Developing all required contracts and agreements subject to review as to legal form and sufficiency by the MTPO attorney; and
  7. At the direction of the MTPO, obtain a year end audit of all MTPO funding by an independent auditor and present these audit findings to the MTPO.
- E. At the direction of the MTPO, the Planning Council shall direct and cooperate with any consultants hired by the MTPO.
- F. The Planning Council may subcontract work, as required with the approval of the MTPO.

V. MTPO RESPONSIBILITIES

- A. The MTPO shall annually provide the required funds to meet staffing costs of the Planning Council as documented in the Unified Work Program referenced in Section III. A. of this Agreement.
- B. The MTPO shall be the recipient of funds authorized by Title 23 United States Code Section 104(f) and those planning funds authorized by Title 49 United States Code Section 5303.
- C. The MTPO agrees to utilize the professional staff of the Planning Council, but it may also utilize City or County legal services with the consent of the governing body involved.
- D. The MTPO agrees that the Executive Director of the Planning Council shall be the spokesperson for the Planning Council professional staff and shall have complete control over the hiring/terminating of said Planning Council professional staff.
- E. The MTPO agrees that the Executive Director of the Planning Council shall annually prepare the MTPO budget for the fiscal year ending September 30 and shall submit such budget to the MTPO for review and approval.

VI. METHOD OF PAYMENT

The Planning Council may submit invoices to the MTPO for work completed on a monthly basis. Subject to receipt of an invoice from the Planning Council, the MTPO

will pay the Planning Council within thirty (30) days of receiving such invoice from the Planning Council; provided however, payment for services funded with either Federal Highway Administration, Federal Transit Administration or Florida Department of Transportation funds shall be contingent upon the MTPO receiving such funds. Furthermore, the MTPO will pay the Planning Council within thirty (30) days of receipt of such funds by the MTPO.

VII. DURATION OF AGREEMENT AND TERMINATION WITHOUT CAUSE

This Agreement shall remain in effect until terminated by either or both parties to the Agreement. Either party may withdraw from said Agreement after presenting in written form a notice of intent to withdraw to the other party, at least sixty (60) days prior to the intended date of withdrawal; provided financial commitments made prior to withdrawal are effective and binding for their full term and amount regardless of withdrawal.

VIII. AMENDMENT OF AGREEMENT

Amendments of this Agreement may be initiated by the MTPO or the Planning Council. Amendments shall be formally approved by the MTPO and the Planning Council in written form and shall be incorporated as part of this Agreement.

IX. STANDARD PROVISIONS

A. Subcontracting

The Planning Council shall perform or shall subcontract the work to be performed hereunder which is budgeted as the MTPO's direct responsibility and funded by the Federal Highway Administration, the Federal Transit Administration and the Florida Department of Transportation.

B. Supplemental Agreements

It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.

C. Third Party Contracts

Except as otherwise authorized in writing by the Florida Department of Transportation, Federal Highway Administration and Federal Transit Administration, the Planning Council shall not execute any contract or obligate

itself in any other manner with any third party with respect to the Project without the prior written concurrence of the Florida Department of Transportation, Federal Highway Administration and Federal Transit Administration. Subletting of consultant contracts shall be in accordance with the requirements of the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as amended from time to time.

D. Default and Termination or Suspension

1. Termination or Suspension Generally. If the Planning Council abandons or, before completion, finally discontinues the Project; or if for any other reason, the commencement, prosecution or timely completion of the Project by the Planning Council is rendered improbable, infeasible, impossible or illegal, the MTPO may, by written notice to the Planning Council, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the MTPO may terminate any or all of its obligations under this Agreement.
  
2. Action Subsequent to Notice of Termination or Suspension. Upon receipt of any final termination notice under this Section, the Planning Council shall proceed promptly to carry out the actions required therein which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other actions as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; and (2) furnish a statement of the status of the Project activities and of the Project Account as well as a proposed schedule, plan and budget for terminating or suspending and closing out Project activities and contracts, and other undertakings, the cost of which are otherwise includable as Project costs. The closing out shall be carried out in conformity with the latest schedule, plan and budget as approved by the MTPO or upon the basis of terms and conditions imposed by the MTPO upon the failure of the Planning Council to furnish the schedule, plan and budget within a reasonable time. The acceptance of a remittance by the Planning Council or the closing of Federal financial participation in the Project shall not constitute a waiver of any claim which the MTPO may otherwise have arising out of this Agreement.

E. Audit and Inspection of Records

1. The Planning Council shall maintain records and supporting documents as prescribed in federal and state requirements, including but not limited to Title 23 Code of Federal Regulations Part 420, Title 49 Code of Federal Regulations Part 18, and Chapter 119, Florida Statutes.
2. All records pertinent to this Agreement shall be retained by the Planning Council for six (6) years following termination of this Agreement, with the following exception: If any litigation, claim or audit is started before the expiration of the six (6) year period and extends beyond the six (6) year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved.
3. All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and objectives of the Project and all other applicable laws and regulations.
4. The Planning Council shall allow access to its records at reasonable times to the MTPO, its employees and agents, to Federal Highway Administration, its employees and agents, the Federal Transit Administration, its employees and agents and the Florida Department of Transportation, its employees and agents. "Reasonable" shall be construed to mean during normal business hours of 8:00 a.m. to 5:00 p.m. on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the MTPO, the Federal Highway Administration, Federal Transit Administration and the Florida Department of Transportation.

F. Equipment

Where Federal funds are to be used to provide part or all of the cost of equipment, such expenditures must have prior written approval of the Florida Department of Transportation and the Federal Highway Administration and must be in accordance with the requirements of Title 49 Code of Federal Regulations Part 18.

G. Publication, Rental of Space or Equipment and Indirect Costs

This Agreement is subject to all applicable requirements of the United States Office of Management and Budget Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, relative to approval of travel, report publication provisions, rental of space or equipment, and indirect costs. All reports published by the MTPO or Planning Council which were funded wholly or in part by Title 23 United States Code Section 134 or Title 49 United States Code Section 5303 funds shall contain the credit "The preparation of this report has been financed in

part through grants from the Federal Highway Administration and Federal Transit Administration, U.S. Department of Transportation, under the State Planning and Research Program, Section 505 [or Metropolitan Planning Program, Section 104(f)] of Title 23, United States Code. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.”

#### H. Nondiscrimination

1. Compliance with Regulations. The Planning Council shall comply with the regulations of the U.S. Department of Transportation relative to the nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49 Code of Federal Regulations Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination. The Planning Council, 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, national origin, sex, age, disability, familial status, religious status, marital status, sexual orientation or gender identity in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Planning Council will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers the program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations made by competitive bidding or negotiation made by the Planning Council for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the Planning Council of obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability, familial status, religious status, marital status, sexual orientation or gender identity.
4. Information and Reports. The Planning Council 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 Florida Department of Transportation, Federal Highway Administration or Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Planning Council is in the exclusive possession of another who fails or refuses to furnish this information, the Planning Council shall certify to the Florida Department of Transportation,

Federal Highway Administration or Federal Transit Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions of Noncompliance. In the event of the Planning Council's noncompliance with the nondiscrimination provisions of this Agreement, the MTPO shall impose such sanctions as it may determine to be appropriate, including, but not limited to, withholding of payments to the Planning Council under this Agreement until the Planning Council complies; and/or cancellation, termination or suspension of this Agreement, in whole or in part.
  
6. Incorporation of Provisions. The Planning Council will include the provisions of Paragraphs 1. through 4. in every subcontract, including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. The Planning Council will take such action with respect to any subcontractor or procurement as the Florida Department of Transportation, Federal Highway Administration or Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however that, in the event the Planning Council becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Planning Council may request the State 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.

I. Training

The use of Title 23 United States Code Section 134 or Title 49 United States Code Section 5303 funds for training of employees of the Planning Council shall be in accordance with the requirements of 49 Code of Federal Regulations, Part 18.

J. Prohibited Interests

The Planning Council shall insert in all contracts entered into in connection with the Project or any property included or planning to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

“No member, officer or employee of the Planning Council or of the locality during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.”

This provision shall not be applicable to any agreement between the Planning Council and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental agency.

X. AGREEMENT SUBJECT TO JOINT PARTICIPATION AGREEMENT

This Agreement is subject to the provisions contained in the Joint Participation Agreement between the MTPO and the Florida Department of Transportation, dated July 1, 2010.

XI. LIABILITY

The Planning Council hereby agrees to hold harmless the MTPO, to the extent allowed and required by law, from all claims, demands, liabilities, and suits of third persons or entities not a party to this Agreement arising out of, or due to any act, occurrence or omission of the Planning Council, its subcontractors or agents, if any, that is related to the Planning Council's performance under this Agreement.

XII. ASSIGNABILITY

The Planning Council shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior consent of the MTPO.

XIII. REPRESENTATIVES FOR THE PARTIES

In all matters relating to the performance of this Agreement, the Chair of the MTPO shall represent and act for the MTPO and the Executive Director of the Planning Council shall represent and act for the Planning Council.

XIV. VENUE AND JURISDICTION FOR LITIGATION BETWEEN PARTIES

This Agreement shall be construed according to the laws of the State of Florida. Venue shall be exclusively in Alachua County, Florida for all litigation between the parties and all issues litigated between the parties shall be litigated exclusively in a court of competent jurisdiction of Alachua County, Florida. If any provision hereof is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict, and shall be deemed severable, but shall not invalidate any other provision of the Agreement.

XV. COMPLETE CONTRACT

This Agreement constitutes the entire contract between the parties, and any changes, amendments or modifications hereof shall be void unless the same are reduced to writing and signed by parties hereto.

XVI. PREVIOUS AGREEMENT SUPERSEDED

Upon execution by both parties, this Agreement shall supersede the North Central Florida Regional Planning Council Contract for Professional Staff Services between the MTPO and the Planning Council dated April 1, 1978.

XVII. EFFECTIVE DATE

This Agreement is effective on the 1st day of July, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized on the date first above written.

ATTEST:

NORTH CENTRAL FLORIDA  
REGIONAL PLANNING COUNCIL

SEAL



Scott R. Koons  
Executive Director



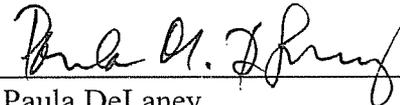
Louie Davis  
Chair

ATTEST:

METROPOLITAN TRANSPORTATION  
PLANNING ORGANIZATION FOR THE  
GAINESVILLE URBANIZED AREA



Cynthia Moore Chestnut  
Secretary-Treasurer



Paula DeLaney  
Chair

APPROVED AS TO FORM



David Schwartz  
MTPO Attorney



Jonathan F. Wershow  
Council Attorney