

**INTERLOCAL AGREEMENT
FOR ADMINISTRATIVE SERVICES
BETWEEN THE PALM BEACH TRANSPORTATION PLANNING AGENCY
AND _____**

THIS INTERLOCAL AGREEMENT is made and entered into this ____ day of _____, by and between the Palm Beach MPO, doing business as the Palm Beach Transportation Planning Agency, an entity created and operating pursuant to the provisions of Chapters 163 and 339, Florida Statutes (referred to herein as the "TPA") and _____, a political subdivision of the State of Florida by and through its _____ (also referred to herein as the "Municipality").

W I T N E S S E T H:

WHEREAS, Section 339.175(2), Florida Statutes, provides for the designation of at least one metropolitan planning organization for each urbanized area of the state; and

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

WHEREAS, pursuant to Section 339.175(2)(b), Florida Statutes, the TPA is an independent governmental entity separate and distinct from the state and the governing body of any entity that is represented on the Governing Board of the TPA or that is a signatory to the Interlocal Agreement; and

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

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

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

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

WHEREAS, the Municipality declares that entering into this Agreement serves a legitimate municipal purpose and that the Municipality has the authority to enter into this Agreement and to provide the services hereinafter described; and

WHEREAS, the TPA and the Municipality desire to enter into this Agreement to define the administrative services to be provided to the TPA by the Municipality and the duties and obligations of each party to the other are set forth therein.

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

SECTION 1. 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:

1.1 "Administrative Services" – services provided by the Municipality to the TPA including account set up, bookkeeping, auditing, monthly statements and recordkeeping.

1.2 "Agreement" – this Interlocal Agreement as it may be amended or extended from time to time.

1.3 "Municipality" – the _____ of _____, a political subdivision of the State of Florida.

1.4 "Fund Amount" – Balance in a revolving account set up for the purposes of the TPA withdrawals and deposits separate from other Municipality accounts in an amount not to exceed \$300,000.

1.5 "Revolving Account" – a Municipality funded account to provide the TPA with advance funding, which will be fully reimbursed by the TPA through federal, state or local grants as such funding shall be received from time to time.

1.6 "TPA" – The Palm Beach TPA is the federally designated transportation policymaking board for Palm Beach County, Florida.

SECTION 2. PURPOSE AND SCOPE.

2.1 The purpose of this Agreement is to set the terms and conditions applicable to the Municipality's commitment to provide Administrative Services to the TPA.

2.2 The Municipality shall provide funding assistance in the form of a Revolving Account, with a Fund Amount not to exceed \$300,000, and Administrative Services to the TPA to assist in managing the continuing, cooperative and comprehensive transportation planning process for the urbanized area within Palm Beach County. The TPA shall reimburse the Municipality for any funds used from the Revolving Account on a regular basis and shall pay the Municipality for the Administrative Services rendered.

2.3 The purpose of this Agreement is limited to the provision of funding assistance by the Municipality to the TPA. The Municipality has no other authority, express or implied, over the TPA Board, Executive Director, or staff.

SECTION 3. TERM AND TERMINATION.

3.1 Effective Date and Term. The term of this Agreement shall begin on October 1, 2018 and shall continue up to and include September 30, 2023. The TPA shall file a fully executed copy of this Agreement with the Clerk of the Circuit Court of Palm Beach County, Florida, pursuant to Chapter 163, Part 1, Florida Statutes.

3.2 Extension of Term. The Municipality hereby grants to the TPA the option to extend the term of this Agreement for up to two (2) additional five (5) year periods. (If both options are exercised the term of the Agreement will expire on September 30, 2033.) In the event the TPA elects to exercise an option granted hereunder, it will notify the Municipality in writing of its election, in accordance with the provisions of Section 9.1 of this Agreement, at least six (6) months prior to the expiration of the then current term of the Agreement.

3.3 Termination for Convenience. Either party may terminate this Agreement for convenience at any time with one hundred eighty (180) days prior notice to the other party.

3.4 Termination for Cause. If either party fails or refuses to perform any of the provisions of this Agreement or otherwise fails to timely satisfy the provisions of this Agreement, the non-performing party shall be notified in writing of its non-performance and be provided with no less than one hundred eighty (180) days to cure its non-performance. In the event the non-performing party has not cured its breach within the time period specified, the other party may terminate this Agreement upon no less than one hundred eighty (180) days additional written notice to the non-performing party of its intent to terminate and shall specify in such notice the effective date of its termination.

3.5 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 90 days) all records held by it with respect to this Agreement in accordance with Florida law regarding the transfer of public records to a successor custodian. The parties agree that neither party waives any of its rights to seek damages of any kind against the other party in the event of any default of any of the terms hereunder. After termination, this Agreement shall have no further continuing effect and the parties will not be obligated to each other, except those obligations noted as surviving termination, those duties or responsibilities to be carried out upon or after termination, and those duties or responsibilities arising on or before the date of termination which have not been completed and are of a continuing nature or character.

SECTION 4. MUNICIPALITY RESPONSIBILITY.

4.1 The Municipality agrees to provide funding assistance in an amount of no greater than \$300,000 (the "Fund Amount") for the TPA to access from time to time to operate its accounts payable, accounts receivable and payroll functions consistent with the adopted TPA Unified Planning Work Program ("UPWP") (2-year Budget) and which are to be reimbursed by federal or state agencies.

4.2 The Municipality shall not, within a particular fiscal year, penalize the TPA, limit its line of credit, delay line of credit payments to the TPA, or charge interest or other fees for delayed or disapproved reimbursements from state or federal sources provided, however, that the failure of the TPA to receive reimbursement shall not excuse or release the TPA from its obligation to repay to the Municipality the advanced funds.

4.3 The Municipality shall provide the TPA with a quarterly report ("Quarterly Report") of withdrawals, repayments and outstanding balance on the Fund Amount.

4.4 The Municipality shall include the TPA Revolving Account in the Municipality's budget. The Municipality shall include the TPA Revolving Account in its annual audit performed by independent auditors. The parties agree to provide to each other and any other third party all information necessary to complete said audit(s) of the Revolving Account. The parties agree that audit report(s) shall be furnished to each other and other agencies as required by the Federal and State single audit guidelines.

4.5 The Municipality shall provide the TPA any funds requested from the Revolving Account up to the maximum amount specified in paragraph 4.1 above within ten (10) business days of a TPA request. The Municipality shall also deposit the requested funding into the Revolving Account as may be necessary to support TPA operations.

SECTION 5. TPA RESPONSIBILITY.

5.1 The TPA shall prepare and submit to the Municipality the adopted TPA UPWP (2-year budget) as mandated by Federal and State law. The TPA's UPWP shall include the cost of all Administrative Services to be provided by the Municipality to the TPA pursuant to this Agreement.

5.2 The TPA shall, upon request by the Municipality, provide supporting documentation for each withdrawal from the Revolving Account.

5.3 The TPA shall prepare and submit invoices in a timely manner for reimbursement of expenses from the TPA's state and federal transportation planning grants.

5.4 The TPA shall submit repayment funds to the Revolving Account within fifteen (15) days from the TPA's receipt of applicable reimbursement funds.

5.5 The TPA shall independently audit, at its own additional expense, the TPA financial records. The TPA shall bear the ultimate responsibility and liability to ensure that all required financial reporting, including but not limited to the filing of applicable tax returns, has been completed in a timely manner.

5.6 The TPA agrees that the Municipality is not responsible for any TPA liability.

SECTION 6. COMPENSATION.

6.1 In consideration for the Administrative Services provided by the Municipality, the TPA shall compensate the Municipality for all costs incurred by the Municipality for the Administrative Services described in Section 4 above, including all direct and indirect costs. Such compensation shall be in the amount of \$500.00 a month, to be paid quarterly (January, March, June, and September of each calendar year). The parties agree that the TPA will commence paying the \$500.00 monthly fee to the Municipality when funds in the Revolving Account are accessed by the TPA. The first initial payment amount will be prorated as may be appropriate. The Municipality acknowledges and accepts the agreed compensation to be reasonable reimbursement to the Municipality for the Administrative Services described in Section 4 above.

6.2 The Municipality agrees to invoice the TPA quarterly and the TPA agrees to make payment to the Municipality each quarter in arrears for the Administrative Services rendered to the TPA as defined in Section 6.2.

6.3 Payments from the TPA shall be made to the Municipality at the address provided in the notice section contained herein.

SECTION 7. INDEMNIFICATION AND GOVERNMENTAL IMMUNITY.

7.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The TPA and the Municipality are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their agents or employees to the extent permitted by law.

7.2 To the fullest extent permitted by law, the Municipality and TPA agree to indemnify and hold the other's officials, employees and agents harmless from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the other, and other persons employed or utilized by that party in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

SECTION 8. RECORD-KEEPING AND RETENTION.

8.1 Each party shall retain all records related to this Agreement and any Administrative Services funded hereunder in accordance with the State of Florida public records retention law and applicable Federal rules and regulations. Each party shall have access to such records, for the purposes of inspection and audit, until such time as the law allows said records to be destroyed.

8.2 Section 8.1 shall survive the expiration or termination of this Agreement.

SECTION 9. GENERAL PROVISIONS.

9.1 Notice. Notice under this Agreement shall be given prepaid or postage 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 TPA:

Executive Director
Palm Beach TPA
2300 N. Jog Rd, 4th Floor
West Palm Beach, FL 33411

To the Municipality:

Municipality Manager/Administrator
_____, Florida

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

(a) 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.

9.2 Assignment. This Agreement and the Administrative Services to be provided hereunder shall not be assigned, subcontracted, or sublet by either party without the express written permission of the other party, which may be denied for any reason or no reason.

9.3 Federal Participation. It is understood and agreed by the parties that in order to permit TPA participation in the expenditure of Federal Planning Funds, this Agreement may be subject to the approval of Federal Highway Administration ("FHWA"), Federal Transit Administration ("FTA") 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 Planning Funds without the approval of FHWA and/or FTA or as otherwise provided for in this Agreement.

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

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

(c) In accordance with 49 CFR §20.110 and 31 U.S.C. §1352, the parties agree to file a certification and disclosure form upon award of any federal contract, grant, or cooperative agreement exceeding one hundred thousand dollars (\$100,000).

9.4 Asset Management. All equipment and supplies purchased by the TPA with federal and/or state grant funds are the property of the TPA. The Municipality shall have no authority, right, claim or interest over the TPA's assets and inventory thereof. The TPA shall adopt and implement an asset management program that will address the tracking and annual inventory of items required by and in accordance with state and federal law.

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

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

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

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

9.9 Attorney's 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.

9.10 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.

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

9.12 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.

9.13 No Third Party Beneficiaries. The parties acknowledge that this Agreement is not intended to be a third party beneficiary contract and neither creates rights in nor confers rights to anyone other than the TPA and the Municipality.

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

_____, Florida, by its

Palm Beach MPO, d/b/a
Palm Beach Transportation Planning Agency

By: _____
_____, Mayor

By: _____
Susan Haynie, Chair

Attest:

Attest:

_____, Municipality Clerk

Margarita Pierce, Executive Assistant

Approved this ___ day of _____, 2018.

Approved this ___ day of _____, 2018.

Approved as to Terms and Conditions

Approved as to Terms and Conditions

Municipality Manager

Nick Uhren, Executive Director

Approved as to Form
and Legal Sufficiency

Approved as to Form
and Legal Sufficiency

Municipality Attorney

TPA Attorney