

TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members

AGENDA ITEM 8E

From: Staff

Date: March 20, 2015 Council Meeting

Subject: Contract with Palm Beach Metropolitan Planning Organization

Introduction

The purpose of this item is to request Council approval to execute a new agreement (attached) with the Palm Beach Metropolitan Planning Organization (MPO) to provide professional services relating to land use and planning assistance in support of MPO projects and priorities. Council staff has been requested by the Palm Beach MPO to continue to provide planning assistance to the MPO and local governments, including general planning services as well as project-specific assistance to be determined by the MPO.

Background

For the past several years, Council staff has assisted the Palm Beach MPO with a broad range of land use planning, evaluation, and public outreach assistance. Council's current agreement expires in June 2015 and the subject agreement would extend Council's professional services relationship with the MPO through June 2020.

Council has been engaged in several planning assistance agreements with the Palm Beach MPO since 2008. A portion of Council's assistance has focused on general land use, transportation, and outreach assistance with local governments and agencies. Additionally, Council has provided project-specific assistance, including station-area planning around existing and anticipated Tri-Rail commuter rail stations, quiet zones and the evaluation impacts regarding the proposed All Aboard Florida project, regional greenways and trails, corridor plans, and the Intracoastal Waterway Plan for Palm Beach County. Council staff has provided assistance regarding MPO documents such as the Long-Range Transportation Plan and Transit Development Plan, as well as evaluations of land use, project design components, and mobility enhancements. Council staff has also assisted the MPO with representation in various local government and regional committees, task forces, and at public hearings and workshops.

Conclusion

Improving the relationship between land use patterns and transportation planning will improve the efficiency and effectiveness of the transportation network, create better opportunities for multi-modal success, and enhance quality of life throughout the region. Additional funding will allow Council to assist in the advancement of these goals, enhance the transit-supportive land use and policy framework in the region, provide direct assistance to local governments, and assist in implementation of the Strategic Regional Policy Plan.

Recommendation

Council should authorize the Executive Director, in consultation with Council's attorney, to negotiate amendments to the contract and to execute the final contract on behalf of Council.

Attachment

**AGREEMENT
BY AND BETWEEN THE
PALM BEACH METROPOLITAN PLANNING ORGANIZATION AND
THE TREASURE COAST REGIONAL PLANNING COUNCIL
FOR PLANNING SERVICES**

This Agreement is made as of this ___ day of April, 2015, by and between the Palm Beach Metropolitan Planning Organization, an entity created pursuant to the provisions of Chapters 163 and 339, Florida Statutes, (hereinafter referred to as the “MPO”) and the Treasure Coast Regional Planning Council, an entity created pursuant to the provisions of Chapters 163 and Chapter 186, Florida Statutes, (hereinafter referred to as the “RPC”).

WITNESSETH

WHEREAS, the MPO has requested the services of the RPC in connection with planning, design and implementation issues related to improving the relationship between land use and transportation planning, including multi-modal techniques and strategies; transit-oriented development; long-range planning; the development of transit-oriented site plans and concept plans; public education, engagement and community involvement activities; alternative transportation modes; fiscal and social analysis of projects and programs; and the development of interagency projects and programs and multi-modal transportation districts and planning tools, as more specifically described in the Scope of Services (also referred to as the “Scope” or “Work”) attached hereto as Exhibit “A” and incorporated into and made a part of this Agreement; and

WHEREAS, the primary focus will be implementation activities related to the MPO Long-Range Transportation Plan and vision, including the development of transportation projects and programs as well as land use/transportation relationships in Palm Beach County and activities that support the mission of the MPO; and

WHEREAS, the MPO agrees to fund the costs associated with the RPC’s performance of the Scope of Services; provided, however, that this funding obligation is contingent upon the Florida Department of Transportation’s (hereinafter “FDOT”) approval of this Agreement, a determination by FDOT that said costs are “eligible project costs” for which the MPO will be reimbursed, and FDOT’s approval of each requisition or invoice submitted by the MPO to FDOT for reimbursement under the MPO’s Joint Participation Agreement with the FDOT dated December 12, 1980 (“JPA”) as it has been or may be amended or replaced from time to time.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and obligations set forth herein, the MPO and RPC agree as follows:

Section 1. **Incorporation of Facts.** The facts set forth above, in the preamble to this Agreement, are true and correct and incorporated into and made a part of this Agreement by reference.

Section 2. **Purpose.** The purpose of this Agreement is to set forth the various duties,

rights, and obligations of the parties regarding RPC's provision of services to the MPO.

Section 3. **Representatives.** The MPO's representative during the performance of this Agreement is Nick Uhren, Executive Director of the MPO, whose telephone number is (561) 684-4170. The RPC's representative during the performance of this Agreement is Michael Busha, Executive Director, whose telephone number is (772) 221-4060.

Section 4. **Effective Date, Term, and Renewal.**

A. This Agreement shall take effect upon July 1, 2015 , and shall remain in full force and effect for a period of five (5) , expiring on June 30, 2020, unless sooner terminated as provided herein.

Section 5. **Services.**

A. All services will be obtained by the MPO, through the MPO Board or the MPO's Contract Representative, by use of a separate Work Order issued after consultation and discussion with the RPC. The parties shall establish a Work Order Form which will be used by the MPO to issue work orders. Each Work Order issued will further define the tasks or services to be provided by the RPC, any deliverables, documents, additional services, or products that will be created, produced or accomplished, the time limits within which the tasks or services will be accomplished, the fee to be paid to the RPC for the provision of services and the estimated reimbursable expenses, if any. The RPC and the MPO's Contract Representatives will negotiate and establish the fee to be paid the RPC under each Work Order. The RPC will estimate the reimbursable expenses, if any, that will be incurred in the performance of each Work Order, and provide the estimate of such expenses to the MPO's Contract Representative for his approval and inclusion in the Work Order. The parties acknowledge that the Scope of Services described in Exhibit "A" may be further refined through the work order process, and that the final determination of all services to be ordered and the cost of such services, is vested in the MPO. The RPC shall not commence any work under any Work Order until after the MPO's Contract Representative issues a Notice to Proceed for the work.

B. Prior to the issuance of the Notice to Proceed, the parties' contract representatives shall establish a timeline for the performance of each task, the expected delivery date for any deliverable(s), and the actual cost of each task or service. The Work shall be performed or completed in accordance with the detailed task requirements shown in the Scope of Services, as further refined in the work orders issued by the MPO. The actual cost of each task, including all reimbursable expenses, if any, shall not exceed the amount established by the parties' contract representatives for that task. Reimbursable expenses shall not exceed the actual costs incurred or the amount estimated, whichever is less. All memoranda, deliverables data, reports, and the like shall be delivered or completed in accordance with the requirements of the MPO.

C. Upon the request of the MPO, RPC representatives will meet with the MPO's staff, officials, members of the public, and participate in meetings of the MPO's Board at the times and places required by the MPO to discuss the status and outcome of the task(s), Work or Scope, as well as the need for revision to a particular task(s) or the performance of additional work. Such meeting(s) and public participation activities, shall be a part of the cost established for each task, and no

additional compensation will be due the RPC for these activities.

Section 6. Payments. The maximum amount to be paid by the MPO to the RPC under this Agreement is Seven Hundred Fifty Thousand Dollars (\$750,000) , including all out-of-pocket or reimbursable expenses. Said funds shall be allocated and distributed for each year of the Agreement as follows:

2015/16	\$150,000.00
2016/17	\$150,000.00
2017/18	\$150,000.00
2018/19	\$150,000.00
2019/20	\$150,000.00

A. The RPC will bill the MPO for services rendered. Each billing shall not exceed the amount established by the parties for the work or task(s) performed. The sum of the cost of the work orders issued for services to be performed in a particular year of this Agreement shall not exceed the funds allocated to that year. The total cost of the performance of all of the tasks described in the Scope, as further refined in the work orders issued, inclusive of all out-of-pocket or reimbursable expenses, shall be equal to or less than the not to exceed contract amount set forth above.

B. Any reimbursable expenses, as identified in the Scope, authorized by Work Order and incurred during the RPC's performance, shall be limited to pre-approved travel and out-of-pocket expenses for express mail, computerized research, word processing charges, long-distance telephone, postage, and photocopying. Such expenses shall be itemized and identified by task. The MPO shall not reimburse the RPC for any travel costs incurred as a direct result of its providing deliverables to the MPO in performance of the services contained in Exhibit "A."

C. Invoices received from the RPC will be reviewed and approved by the MPO's representative, indicating that services have been rendered in conformity with this Agreement and then will be sent to the Palm Beach County Finance Department for payment. Invoices shall cite the contract number and shall contain an original signature of an authorized RPC official. Invoices will normally be paid within thirty (30) days following MPO's representative approval. Payments will be remitted to the RPC at the address set forth in Section 32 of this Agreement or such other address as is designated in writing by the RPC to the MPO.

D. All requests for payment of expenses eligible for reimbursement under the terms of this Agreement shall include copies of said receipts, invoices, or other documentation acceptable to the MPO and Palm Beach County's Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the work described in Exhibit "A." Long-distance telephone calls shall identify the person(s) called, purpose of call, time, and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplication, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

E. In order for each party to close its books and records, the RPC will clearly state “final invoice” on its last and final billing. This certifies that all services have been properly performed and all charges and costs have been invoiced to the MPO. Since this account will thereupon be closed, any and other future charges, if not properly included on this final invoice, are waived by the RPC.

Section 7. Reports and Ownership of Documents.

A. All written and oral information provided by the MPO to the RPC shall be considered a public record open to public inspection unless the MPO simultaneously with the providing of such information to the RPC, specifically and in writing, indicates that certain information is not in the public domain or not previously known and the basis for it being excluded from public review and inspection. All documents, drawings, maps, sketches, programs, data-base reports, and other data developed under this Agreement shall be the shared property of the MPO and other agencies providing funding but may be reused by the MPO or RPC.

B. Notwithstanding anything in this Agreement to the contrary, both parties agree to comply with the provisions of Florida’s Public Records Law. The MPO and RPC each reserves the right to unilaterally cancel this Agreement, should the other party hereto refuse to allow public access to any documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes.

Section 8. No Agency Relationship. Nothing contained in this Agreement or in any contract of the RPC's shall create an agency relationship between the MPO and the RPC. Neither party shall be deemed to have assumed any liability for the negligent or wrongful acts or omissions of the other party, or its officers, employees, servants or agents. In addition, nothing contained herein shall be construed as a waiver of sovereign immunity by either party or a waiver of the liability limits set forth in Section 768.28, Florida Statutes.

Section 9. Termination. This Agreement may be terminated by the RPC upon thirty (30) days written notice to the MPO’s representative in the event of substantial failure by the MPO to perform in accordance with the terms of this Agreement through no fault of the RPC. It may also be terminated, in whole or in part, by the MPO, with cause, immediately upon written notice to the RPC and without cause and for the convenience of the MPO upon five (5) days written notice to the RPC. Notwithstanding the forgoing or anything in this Agreement to the contrary, termination by the MPO shall not become effective until written notice of termination has actually been received by the RPC at its address set forth in this Agreement or other address designated in writing by the RPC in a notice to the MPO. The RPC shall not be entitled to any anticipated lost profits on uncompleted work or other damages as a result of the MPO’s termination of this Agreement for convenience. The RPC shall be paid for services rendered to the MPO’s satisfaction through the date of termination except, if the RPC is in default the MPO shall have a right of set off against the amount that would otherwise be payable to the RPC to compensate the MPO for any actual damages suffered because of the RPC default(s). After receipt of a Termination Notice and except as otherwise directed by the MPO, the RPC shall:

A. Stop work on the date and to the extent specified.

- B. Incur no further costs or place orders for materials, services, or facilities, except as may be necessary to complete that portion of the Work not terminated; provided, that RPC has obtained the MPO's agreement that such must be completed.
- C. Terminate and settle all orders and subcontracts relating to the performance of the terminated Work.
- D. Transfer all work in process, completed work, and other materials related to the terminated Work to the MPO.
- E. Continue and complete all parts of the Work that have not been terminated and prepare all necessary reports and documents required under the terms of this Agreement, up to the date of termination, as requested by the MPO's Contract Representative.

Section 10. **Laws, Regulations and Licensing.** The RPC shall comply with all laws, ordinances and regulations applicable to the work contemplated under this Agreement, including those applicable to conflicts of interest. The RPC is presumed to be familiar with and shall comply with all federal, state and local laws, ordinances, codes and regulations that may, in any way, affect the services provided, including but not limited to Palm Beach County Ordinance No. 2003-030, the Criminal History Records Check Ordinance, as it may be amended from time to time.

Section 11. **Insurance.** It shall be the responsibility of the RPC to provide evidence of the following minimum amounts of insurance coverage or legal liability protection:

A. RPC shall procure and maintain through the term of this Agreement, Worker's Compensation & Employers Liability insurance up to the statutory limits specified in Section 440.02, Florida Statutes. The Worker's Compensation insurance shall extend to all employees of the RPC and, if required by law, shall also extend to volunteers of RPC.

B. Without waiving the right to Sovereign Immunity as provided by Section 768.28, Florida Statutes, RPC and MPO agree that the limits of insurance coverage which the RPC is to procure and maintain through the term of this Agreement for Commercial General Liability and Business Automobile Liability shall be at least the coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence or such monetary waiver limits as may, from time to time during the term of this Agreement, be set forth in the Florida's sovereign immunity statute, which MPO recognizes as acceptable regarding General Liability and Automobile Liability. The RPC reserves the right to self-insure for the coverage limits set forth above.

C. Certificates of Insurance, evidencing that required insurance coverages have been procured by RPC and delivered to the MPO must be provided to the MPO's Contract Representative prior to the RPC's performance of any work under this Agreement. The RPC's failure to provide evidence of coverage prior to the time RPC is to commence performance shall be grounds for the MPO's cancellation or termination of this Agreement. If the RPC elects to self-insure during the term of this Agreement it shall provide evidence thereof in a form deemed satisfactory to MPO and have received MPO's approval thereof prior to terminating RPC's insurance coverage. The signed Affidavit or Certificate of Insurance evidencing the required Commercial General Liability insurance coverage shall contain an "additional insured endorsement" naming the Palm Beach Metropolitan Planning Organization, as an additional insured.

- D. When obtaining new insurance, the RPC shall endeavor to obtain Certificate(s) of

Insurance containing a statement that unequivocally provides that not less than ten (10) days written notice to MPO will be given prior to cancellation of coverage thereunder. In the event RPC is unable to provide Certificate(s) of Insurance that satisfy the notice requirements of this paragraph, the MPO's Executive Director may, on a case by case basis and for good cause shown (*e.g.*, RPC is unable to furnish a certificate of insurance that complies in all respects with the notice requirements after diligently attempting to obtain such a certificate), waive or vary these notice requirements.

E. All insurance must be acceptable to and approved by MPO and Palm Beach County as to form, types of coverage, and acceptability of the insurers providing coverage.

Section 12. Personnel.

A. RPC represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the MPO nor shall they be considered as joint employees or volunteers of the MPO.

B. All of the services required hereunder shall be performed by the RPC or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

C. RPC warrants that all professional services shall be performed by skilled and competent personnel to the highest professional standards in the field.

Section 13. Availability of Funds. The MPO's performance and obligation to pay under this Agreement is contingent upon its receipt of funds, as a grantee or funding recipient of FDOT or the U.S.DOT or an agency thereof, which funds are to be used for the purposes of this Agreement, and an annual appropriation for the purposes of the Agreement by the MPO and Palm Beach County's Board of County Commissioners. In addition, the MPO shall not be obligated to perform or pay for any services provided or to be provided under this Agreement, including reimbursement of costs and expenses: 1) if FDOT has not approved this Agreement; 2) if FDOT determines that any of the services provided or to be provided, including reimbursement of costs or expenses are not "eligible project costs" for which the MPO may be reimbursed; 3) if FDOT shall not approve any requisition or invoice submitted by the MPO to FDOT for reimbursement; or 4) if FDOT shall terminate or cancel its JPA with the MPO or fail to fully fund its obligations thereunder. The MPO's failure to receive funds or the revocation of funding shall constitute a basis for the MPO's termination of this Agreement for convenience.

Section 14. Conflict of Interest. RPC represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Section 112.311, Florida Statutes. RPC further represents that no person having any such interest shall be employed to assist in the performance of this Agreement. The RPC shall promptly notify the MPO's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence RPC's judgment or the quality of services being provided hereunder. Such written notification shall identify the prospective business

association, interest, or circumstance, the nature of work that RPC may undertake and advise the MPO as to whether the association, interest, or circumstance would constitute a conflict of interest if entered into by RPC. The MPO may notify RPC of its opinion as to whether a conflict exists under the circumstances identified by the RPC. If, in the opinion of the MPO, the prospective business association, interest or circumstance would constitute a conflict of interest by the RPC, then the RPC shall immediately act to resolve or remedy the conflict. If the RPC shall fail to do so, the MPO may terminate this Agreement for cause.

Section 15. **Independent Contractor Relationship.** RPC is and shall be, in the performance of the Work, services and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the MPO. All persons engaged in any of the Work or services performed pursuant to this Agreement shall, at all times and in all places, be subject to RPC's sole direction, supervision, and control. RPC shall exercise control over the means and manner in which it and its employees perform the Work, and in all respects, RPC's relationship and the relationship of its employees to MPO shall be that of an Independent Contractor and not as employees or agents of the MPO. RPC does not have the power or authority to bind the MPO in any promise, agreement, or representation.

Section 16. **Contingent Fees.** The RPC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for RPC, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for RPC, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Section 17. **Access and Audits.** RPC shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after completion or termination of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, RPC shall maintain such records until notified by the MPO that the litigation or claims have been concluded and resolved. The RPC shall maintain all records in Palm Beach County or such other location in the State of Florida approved by the MPO's Contract Representative. The MPO, the Palm Beach County Inspector General, the Florida Department of Transportation (also referred to herein as "FDOT") and the U.S. Department of Transportation, and any agency thereof, shall have access to and RPC shall make available its books, records, and documents related to the performance of this Agreement, for the purpose of inspection or audit, during normal business hours at the MPO's or RPC's place of business.

Section 18. **Preparation of Documents, Certifications and Reports.** Should the MPO be required by FDOT or an agency of the Federal government, including but not limited to the U.S.DOT, or any agency thereof, to provide any certifications, documents or reports related in any manner to this Agreement, RPC will cooperate and assist the MPO with the preparation of such.

Section 19. **FDOT Funded Project.** This Agreement is funded in whole or in part with funds received from FDOT by the MPO. The expenditure of such funds is subject to the terms and conditions of a Joint Participation Agreement (JPA) between the MPO and the FDOT dated December 12, 1980, as it may be amended, replaced or revised from time to time. The RPC shall not perform any act, fail to perform any act or refuse to comply with MPO requests which would cause

the MPO to be in violation of any term or condition of its JPA with FDOT or cause FDOT to refuse to approve a requisition or invoice for payment or reimbursement submitted by the MPO. RPC will immediately remedy any deficiency or violation found by the MPO upon notice of such from the MPO, or alternatively, and in addition to any other right to terminate this Agreement, RPC may terminate this Agreement by providing written notice to the MPO. In the event of termination, the RPC will be paid by the MPO for services satisfactorily rendered through the effective date of termination; provided, that, no circumstance(s) exists which would limit or restrict the MPO's obligation to pay, as set forth in this Agreement, including but not limited to those described in Section 13. The MPO's obligation to pay the RPC is contingent upon the MPO's receipt of funds from the FDOT for the purposes of this Agreement.

Section 20. **Authority to Practice.** RPC hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to MPO's representative upon request.

Section 21. **Assignment.** Neither this Agreement nor any interest herein shall be assigned, subcontracted, conveyed, transferred, or otherwise encumbered, in whole or in part, by RPC without the prior written consent of MPO.

Section 22. **Indemnification.**

A. To the extent permitted by law, the RPC agrees to protect, defend, reimburse, save, indemnify and hold the MPO, its successors or assigns, and directors, officers, employees, servants and agents, free and harmless at all times from and against any and all suits, actions, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature related to or arising out of the RPC's performance of this Agreement, and whether directly or indirectly caused, occasioned or contributed to, in whole or in part, by reason of any act, omission, fault or negligence, whether active or passive, of the RPC or anyone under its direction or control, or on its behalf. RPC's hold harmless and indemnity obligations shall apply to the fullest extent permitted by law, but shall not apply to liability caused by the negligence or willful misconduct of the MPO.

B. RPC further agrees to protect, reimburse, save, defend, indemnify and hold harmless the MPO, its successors and assigns, and its directors, officers, agents, servants and employees from and against any claim, demand, cause of action, loss, liability, interest, attorney fees, costs, and expense of whatsoever kind or nature arising out of any conduct or misconduct of the RPC not included in the paragraph above and for which the MPO or its officers, directors, servants, agents or employees are alleged to be liable.

Section 23. **Application of Federal Law.** The RPC hereby acknowledges that Federal laws, regulations, policies and related administrative practices may be applicable to the RPC's activities under this Agreement. The RPC agrees that this Agreement may be modified by the MPO, upon notice to the RPC and without further act of the parties, to conform to the most recent Federal laws, regulations, policies and related administrative practices made applicable to the MPO and the purposes of this Agreement, as a result of the MPO's status as a grant recipient of Federal funds from the U.S.DOT or an agency thereof. The RPC agrees as follows:

A. The RPC warrants and represents that all of its employees and applicants for employment are treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation and that it will take affirmative action to ensure equal treatment. Such affirmative action will encompass the following: Employment upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

B. The RPC shall comply with the regulations relative to non-discrimination in federally assisted programs of the U.S.D OT at 49 CFR Part 21, as they may be amended from time to time.

C. The RPC will notify each potential subcontractor and supplier of goods and services needed for the performance of this Agreement of the non-discrimination obligations hereunder and that discrimination on the grounds of race, color, disability, religion, sex, age, national origin or familial status is prohibited.

D. The RPC shall provide all information and reports needed by the MPO to ensure compliance with Federal regulations or directives related to RPC's performance of this Agreement or the MPO's obligations hereunder or its grants or funding agreements. The RPC shall permit access to its books, records, accounts, facilities, or other sources of information as may be determined by FDOT or the U.S.DOT to be pertinent to the determination that the RPC and the MPO are in compliance with said regulations or directives.

E. In the event the RPC fails to comply with the non-discrimination provisions of this Agreement, the RPC may be subject to such sanctions as the MPO, FDOT or the U.S. DOT determine to be appropriate, including but not limited to: the withholding of payments; cancellation or termination of this Agreement; or suspension of the Agreement, in whole or in part.

F. The RPC will include each of the above-stated clauses (A through E) of this section, modified to show the particular contractual relationship, in all subcontracts it enters into related to the Work.

G. The RPC does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Acts of 1964 and Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 U.S.C. 2000d, *et. seq.* and 3601 *et. seq.*), and all applicable implementing regulations of the U.S.DOT and its agencies.

H. The RPC does hereby represent and certify that it will comply with all the requirements of the Americans with Disabilities Act (42. U.S.C. 12102, *et. seq.*) and all applicable implementing regulations of the U.S.DOT and its agencies.

I. The RPC shall not enter into any contract, subcontract, or arrangement in connection with the Project or any property included or planned to be included in the Project, in which any member, officer, or employee of the MPO during his or her tenure or for two (2) years

thereafter has any interest, direct or indirect. If any present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his or her tenure any such interest, and if such interest is immediately disclosed, the MPO, with the approval of FDOT, may waive the prohibition contained herein; provided, that, any such present member, officer or employee shall not participate in any action relating to the Work. The RPC shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in the Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

No member, officer, or employee of the MPO during his tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

J. No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

K. The RPC shall report all grievances or complaints pertaining to its actions and obligations under this Article to the MPO.

Section 24. **Remedies.** This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. No person or entity other than the RPC or MPO shall have any rights in this Agreement or any remedy against either the RPC or MPO for a violation of any of the terms and conditions set forth herein or pertaining in any way to the services to be rendered by the RPC to the MPO hereunder.

Section 25. **Enforcement Costs.** Any costs or expenses, including reasonable attorney fees, associated with the enforcement of the terms and conditions of this Agreement shall be borne by the respective parties.

Section 26. **No Waiver.** No waiver of any provisions of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver.

Section 27. **Captions.** The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

Section 28. **Joint Preparation.** The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 29. **Severability.** Should any section, paragraph, sentence, clause, or provision

hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement.

Section 30. **Entirety of Agreement and Modifications.** MPO and RPC agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.

Section 31. **Survivability.** Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

Section 32. **Notice.** Notices, invoices, communications, and payments hereunder shall be deemed made if given in any of the following forms: (i) by registered or certified envelope, postage prepaid, and addressed to the party to receive such notice, invoice, or communication; (ii) by overnight courier service addressed to the party to receive such notice, invoice, or communication; or (iii) by hand delivery to the office of the party to whom such notice, invoice, or communication is being given. All notices, invoices, or communications shall be addressed to a party at the address given below or such other address as may hereafter be designated by notice in writing.

If to MPO: Nick Uhren, Executive Director
Palm Beach Metropolitan Planning Organization
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411
Phone: (561) 684-4170
Fax: (561) 242-7165

If to RPC: Michael Busha, Executive Director
Treasure Coast Regional Planning Council
421 SW Camden Avenue
Stuart, FL 34994
Phone: (772) 221-4060
Fax: (772) 221-4067

Section 33. **No Intended Third Party Beneficiaries.** The parties acknowledge that this Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the MPO and ROC.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, RPC and MPO have hereunto set their hands the day and year above written.

ATTEST:

PALM BEACH METROPOLITAN
PLANNING ORGANIZATION

By: _____
Executive Secretary

By: _____
Chair

WITNESS:

TREASURE COAST REGIONAL PLANNING
COUNCIL

Signature

By: _____
Chair

By: _____
Michael Busha

Approved as to Form and
Legal Sufficiency

Approved as to Terms
and Conditions

By: _____
County Attorney

By: _____
Executive Director, MPO

Exhibit "A"

SCOPE OF SERVICES

Land Use, Transportation, Planning and Facilitation Services

This exhibit forms an integral part of that certain agreement between Palm Beach Metropolitan Planning Organization and the Treasure Coast Regional Planning Council dated April __, 2015.

THE PROJECT

Land Use, Transportation, Planning and Facilitation Services

SCOPE OF WORK

The Treasure Coast Regional Planning Council (TCRPC) will assist the Metropolitan Planning Organization (MPO), cities within Palm Beach County, and related transportation/transit agencies (including PalmTran, South Florida Regional Transportation Authority, Amtrak, and Florida Department of Transportation) with the development of planning, design, and implementation strategies to improve the relationship between land use and transportation and improve the delivery of transportation services and activities. The focus will include work on evaluation and implementation tools necessary to advance transit-oriented development patterns at transit stations and along transit corridors within Palm Beach County and in the context of the southeast Florida region. This work will also include a focus on alternative transportation modes, including greenways, trails, bicycle and pedestrian facilities. These tools include master plan concepts, evaluation and development of comprehensive plans and land development regulations, financial and planning analyses, site plan development and reviews, and interagency coordination for the timing, funding, and review of potential projects and programs. TCRPC will be available as requested to work with local governments and local agencies, including existing and planned transit stations and corridors along the FEC, South Florida Rail Corridor/CSXT, and others in Palm Beach County. The work will include the advancement of multi-modal techniques where appropriate, such as multi-modal transportation districts, corridor master plans, multi-modal levels-of-service, mobility impact fees and capital improvements, and transit-oriented overlay zones and codes, and the facilitation of community planning activities, such as workshops, town hall meetings, and charrettes, with the participation of the affected local governments and agencies..

A general description of the types of work which may be performed is set forth below.

I. MULTI-MODAL PLANNING ASSISTANCE

- a. Evaluate and provide recommendations for proposed multi-modal transportation districts, corridor master plans, transit corridors, and other regulatory and design mechanisms to encourage multi-modal networks, improved efficiency in the delivery of transportation services, and more successful land use/transportation relationships.
- b. Assist in the creation of alternative concurrency mechanisms and transportation

mobility measures, such as multi-modal levels of service, impact fees, and capital improvements programs as appropriate as well as funding mechanisms such as proportionate fair-share assessments and funding districts.

- c. Assist in development of planning, financial, legal, and regulatory mechanisms to increase transit funding from federal, state, and other sources.
- d. Assist in the planning, evaluation, design, and development of alternative transportation facilities including greenways, trails, bicycle, and pedestrian modes and their integration with vehicular facilities.
- e. Participate on behalf of the MPO in meetings and events as requested for matters related to the MPO mission, including but not limited to the Long-Range Transportation Plan; the multi-modal transportation network; local or regional transit service; local government or agency activities; land development proposals; interagency projects and programs; public outreach, finance, and technical evaluations.
- f. Assist in the development and implementation of MPO projects and programs, grant programs, interagency funding requests, and related activities.
- g. Assist in the development of applications and support materials for MPO funding requests, grant and award programs, state and federal programs, and related activities to raise awareness of and provide funding for MPO priorities and activities.

II. PLANNING AND DESIGN ASSISTANCE FOR LOCAL GOVERNMENTS AND AGENCIES

- a. Work with local governments and agencies to review and evaluate regulatory conditions, including land use and zoning designations, development activity and trends, and land use patterns located near existing or emerging transit stations and along transit corridors.
- b. Evaluate Comprehensive Plan policies and land development regulations related to transit, TOD, multi-modal improvements, interconnectivity, and related issues and assist with recommended revisions as appropriate.
- c. Provide assistance to local governments and agencies to improve the planning, implementation, evaluation, and funding of transportation projects and programs.
- d. Review proposed development plans as related to the transportation network in Palm Beach County and provide planning and design recommendations related to mix of uses, building placement, multi-modal transportation, Complete Streets, transit interconnectivity, parking locations and quantities, open spaces, civic and cultural uses, and financial and other impacts.
- e. Facilitate meetings with property owners, developers, city staff and officials, staff of

other public agencies, and other interested parties.

- f. Presentation of conceptual design plans for transportation and land use improvements to local governments, public agencies, citizens, and developers as requested.
- g. Conduct public presentations regarding matters related to the MPO mission, including multi-modal transportation facilities and systems, integrated land use/transportation planning, and related issues to MPO, local governments, other public agencies, other relevant entities, and the public as requested.

III. COMMUNITY PLANNING ACTIVITIES TO DEVELOP MULTI-MODAL CONCEPT PLANS

- a. Conduct comprehensive analyses of planning, design and implementation issues for specific locations and improvements utilizing community planning methods (*e.g.*, charrette process, town hall meetings, workshops) to develop concept plans, station area master plans, corridor plans, plans for multi-modal circulation, and other related plans and analyses.

FINAL WORK PRODUCTS

Deliverables: TCRPC shall provide the local governments and other involved agencies with the following deliverables as final work products:

- 1-1: Quarterly reports summarizing activities as related to tasks, including copies of evaluations and recommendations for local government and agency documents (*e.g.*, regulatory, planning, financial documents); urban design documentation including concept plans, drawings and sketches; mapping analyses; regulatory language revisions; , and other relevant plans and documents as appropriate.
- 1-2: Meeting summaries as related to tasks and requested activities, including listing of participants as appropriate, agendas, summary documents, and presentations.
- 1-3: Copies of documents, studies, reports, evaluations, and related materials developed in the execution of tasks as assigned.