

**Executive Committee
Meeting Minutes
April 6, 2022**

Members Physically Present:

Commissioner Chris Cloudman
Commissioner Victor Ramos
Councilwoman Christine Power
Mayor Bill Partington
Council Member Billie Wheeler, Chairperson
Council Vice Chair Barbara Girtman

Representing:

DeLand
Deltona
Edgewater
Ormond Beach
Volusia County
Volusia County

Members Virtually Present

Commissioner Jason McGuirk

Representing:

New Smyrna Beach

Others Present:

Debbie Stewart, Recording Secretary
Colleen Nicoulin
Stephan Harris
Anna Tyler
Rakinya Hinson
Jon Cheney

Representing:

TPO Staff
TPO Staff
TPO Staff
FDOT
FDOT
Volusia County Traffic Engineering

Others Virtually Present:

Pam Blankenship
Jay Williams

Representing:

TPO Staff
Volusia County

I. Call to Order / Roll Call / Determination of Quorum

The meeting of the River to Sea Transportation Planning Organization (TPO) Executive Committee was called to order at 9:00 a.m. by Chairperson Billie Wheeler. The roll was called and it was determined that a quorum was physically present. Due to the COVID-19 virus, the meeting was held in a hybrid format with six voting members physically present and with one member attending virtually.

MOTION: *A motion was made by Mayor Partington to allow TPO Board members attending remotely due to COVID-19 precautions to participate and vote. The motion was seconded by Councilwoman Power and carried unanimously.*

II. Public Comment/Participation

There were no public comments.

III. Discussion Items

A. Update on COVID-19 Business Practices and Impacts

Ms. Nicoulin reminded members that staff was directed to contact the TPO's legal counsel for advice on continuing hybrid meetings; she did so and the attorney indicated there are two types of hybrid meetings. One is for the public and the other is for board and/or committee members to participate and vote; for board and/or committee participation remotely, there must be a physical quorum in attendance and there must be a "significant circumstance" which is not specifically defined. Each member participating remotely would identify what their specific circumstance is and those members physically present on the board would determine if it is a "significant circumstance". A medical reason would be considered a "significant circumstance"; if it is inconvenient to be physically present, it would not be considered to be a "significant circumstance". As a result of COVID-19, the TPO has been trying to limit the number of people physically present; we have been asking for the physical quorum plus one and encouraging others to participate virtually. We do not want large gatherings and allow for social distancing.

Chairperson Wheeler commented that she is fine with keeping things the way they are and giving people that cannot be physically present the opportunity to still participate. She asked the committee members for their thoughts.

Members discussed hybrid meetings and agreed to continue them for the foreseeable future.

B. Status of TPO Financial Management

Ms. Nicoulin stated the TPO is caught up with FDOT monthly invoicing. Last month, time was spent preparing the new Unified Planning Work Program (UPWP) which is a financial effort so the focus was not on the invoicing but an invoice package is ready to be submitted to FDOT for review and approval. Also last month, a de-obligation of SU funds from the current UPWP was approved which has taken some time to get the information to FDOT. We are moving in the right direction; since we have caught up with invoicing, it has allowed time to focus on other areas such as the development of the new UPWP.

IV. Business Items

A. Review and Approval of March 2, 2022 Executive Committee Minutes

MOTION: *A motion was made by Mayor Partington to approve the March 2, 2022 Executive Committee minutes. The motion was seconded by Councilwoman Power and carried unanimously.*

B. Review and Approval of March 10, 2022 Executive Director Search Committee Minutes

Ms. Nicoulin explained that since the Executive Director Search Committee (EDSC) is not expected to meet again in the near-term, it is appropriate according to Robert's Rules to bring minutes to another committee for approval.

MOTION: *A motion was made by Commissioner Ramos to approve the March 10, 2022 Executive Director Search Committee minutes. The motion was seconded by Councilwoman Power and carried unanimously.*

C. Review and Approval of March 31, 2022 Executive Director Search Committee Minutes

MOTION: *A motion was made by Mayor Partington to approve the March 31, 2022 Executive Director Search Committee minutes. The motion was seconded by Councilwoman Power and carried unanimously.*

D. Review and Recommend Approval of Executive Director Timesheet Review Report

MOTION: *A motion was made by Mayor Partington to recommend approval of the Executive Director Timesheet Report. The motion was seconded by Councilwoman Power and carried unanimously.*

E. Review and Recommend Approval of Interim Executive Director Agreement Terms

(Handouts)

Chairperson Wheeler referred to the handouts and stated the first agreement was sent by Mr. Doug Thomas, Strategic Government Resources (SGR), the second agreement was sent by the TPO's legal counsel, Mr. Paul Gougelman, and the third agreement has Ms. Nicoulin's edits and is a combined version of the first two. Mr. Gougelman clarified that his version has more clauses that have little-to-no impact on Ms. Nicoulin or the TPO but the federal government requires them.

Ms. Nicoulin reviewed the draft agreements; she explained she took what was provided by Mr. Thomas which outlined the terms in a letter format and incorporated some of the attorney's agreement into it. She noted that Mr. Gougelman indicated some of the clauses that he added after the indemnification section can be ignored; after discussing them with Chairperson Wheeler, it was agreed to not include them as many of them

pertain to the TPO as an organization and not necessarily for the Interim Executive Director position. Some of the clauses are covered in the TPO's Title VI Plan and/or the UPWP Statements and Assurances.

Chairperson Wheeler pointed out that the original draft agreement had Ms. Nicoulin's salary as \$120,000; Mr. Gougelman's comments included that he assumes that is an annualized pay rate for term of the agreement; a clause will help cut down on confusion in case the situation ever arose as laid out in the indemnification in case she is ever sued in her role as Interim Executive Director in her official or personal capacity. It is his recommendation that the committee review that.

Ms. Nicoulin stated that is consistent with the contract with the previous Executive Director which included an indemnification section; the language is different as it was drafted by a different attorney. She reviewed the terms of the marked-up draft agreement and noted that the six-month term of the agreement has an end date of October 31, 2022 and a 4% salary cost-of-living increase has been included. The performance evaluation will be done within six months; the TPO has a process for evaluating the Executive Director position in place but it will be reviewed to see if it needs to be adjusted. Language is included to provide clarification that following the evaluation a recommendation from the Executive Committee will be made to the full TPO Board on whether to extend or remove the interim status. She reviewed the other terms of the draft agreement including the Executive Director's strategic plan on how to move the TPO forward as well as giving her the ability to hire needed staff or utilize consultants.

Members discussed the draft Interim Executive Director Agreement and agreed on the language to be presented to the full TPO Board.

MOTION: *A motion was made by Mayor Partington to recommend approval of the draft Interim Executive Director Agreement. The motion was seconded by Council Vice Chair Girtman and carried unanimously.*

F. Review and Recommend Approval of an Amendment to the FY 2021/22 River to Sea TPO Budget

Ms. Nicoulin explained this budget amendment changes the bottom line of the TPO's revenues. Last month, the TPO Board approved an amendment to de-obligate \$76,900 in SU funds from the current Unified Planning Work Program (UPWP) to use the funds in the first year of the new UPWP; therefore, those funds are being removed from the current approved budget. The other changes are within the expenditures to adjust how funds are being spent; she reviewed those changes.

MOTION: *A motion was made by Mayor Partington to recommend approval of an amendment to the FY 2021/22 River to Sea TPO Budget. The motion was seconded by Commissioner Ramos.*

Council Vice Chair Girtman asked when the best time is to have a discussion to review the SU allocations and criteria to be assured the TPO is in the best position when opportunities arise for projects.

Ms. Nicoulin replied that the TPO is preparing to develop the new Transportation Improvement Program (TIP) and projects are identified as part of that with the different funding sources. In the fall, the policies that establish the funding percentages are reviewed so if there is something identified during the development of the TIP, it can be addressed then.

Commissioner Cloudman referred to the salaries and fringe benefits and the current vacant positions and asked if those positions are included in the current budget.

Ms. Nicoulin replied yes, those positions are included in the budget.

The motion carried unanimously.

G. Review and Approval of April 27, 2022 TPO Board Agenda

Ms. Nicoulin reviewed the draft April 27, 2022 TPO Board agenda and noted the recommendation to suspend the Executive Director search, extension of six months of Ms. Nicoulin's Interim Executive Director status and the Interim Executive Director agreement just discussed will be included as an Action Item.

Commissioner Cloudman asked if a memo should be sent to the TPO Board members regarding the recommendation from the committee on the Interim Executive Director status for Ms. Nicoulin.

Chairperson Wheeler agreed that was a good idea.

Ms. Nicoulin stated she will draft a memo from Chairperson Wheeler for her review and then will send it to the TPO Board members. She continued reviewing the draft April 27, 2022 TPO Board agenda.

MOTION: *A motion was made by Commissioner Ramos to approve the April 27, 2022 TPO Board agenda. The motion was seconded by Council Vice Chair Girtman and carried unanimously.*

Mayor Partington referred to the \$76,9000 that was removed from the current budget and commented that those funds may roll into the current vacant positions to make them more attractive to candidates. He announced that Ormond Beach is streamlining things; he explained how they have updated lien payments and impact fees for dilapidated structures. Therefore, he suggested changing the policy so that instead of taking the time out of this meeting to recommend approval of the Interim Executive Director's timesheet report if the Chairperson has noted there are no abnormalities, to just automatically include them on the Consent Agenda. If there are abnormalities, then it would require further review.

Ms. Nicoulin replied that approval of the Interim Executive Director timesheets is a FDOT requirement; she asked Ms. Taylor if Mayor Partington's suggestion would be okay.

Ms. Taylor stated she does not believe it will be a problem but she will need to verify it and get back to the committee.

V. Staff Comments

There were no staff comments.

VII. Executive Committee Member Comments

There were no Executive Committee member comments.

VIII. Adjournment

The Executive Committee meeting adjourned at 9:54 a.m.

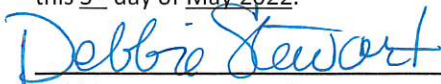
River to Sea Transportation Planning Organization



VOLUSIA COUNTY COUNCIL MEMBER BILLIE WHEELER
CHAIRPERSON, RIVER TO SEA TPO

CERTIFICATE:

The undersigned duly qualified and acting Recording Secretary of the River to Sea TPO certifies that the foregoing is a true and correct copy of the minutes of the April 6, 2022 regular meeting of the Executive Committee approved and duly signed this 5th day of May 2022.



Debbie Stewart, Recording Secretary, River to Sea TPO

**** A recording of the April 6, 2022 Executive Committee meeting is available upon request.**

**RIVER TO SEA TPO
FY 2021/2022 BUDGET
PROPOSED AMMENDMENT**

	Approved FY 2021/2022	Proposed FY 2021/2022	Change
<u>REVENUES</u>			
LOCAL FUNDS	\$ 115,510.00	\$ 115,510.00	\$ -
STATE FUNDS	\$ 31,428.00	\$ 31,428.00	\$ -
FEDERAL FUNDS	\$ 1,673,272.00	\$ 1,596,372.00	\$ (76,900.00)
<u>REVENUES</u>	\$ 1,820,210.00	\$ 1,743,310.00	\$ (76,900.00)
<u>EXPENDITURES</u>			
SALARIES	\$ 594,624.00	\$ 509,624.00	\$ (85,000.00)
FRINGE BENEFITS	\$ 215,392.00	\$ 180,392.00	\$ (35,000.00)
OFFICE SUPPLIES	\$ 10,000.00	\$ 10,000.00	\$ -
POSTAGE	\$ 5,000.00	\$ 5,000.00	\$ -
OFFICE RENT EXPENSE	\$ 128,100.00	\$ 128,100.00	\$ -
ADVERTISING	\$ 4,000.00	\$ 9,000.00	\$ 5,000.00
PRINTING	\$ 8,000.00	\$ 3,000.00	\$ (5,000.00)
CONFERENCE, WORKSHOPS & SEMINAR FEES	\$ 6,300.00	\$ 6,300.00	\$ -
FEES	\$ 40,900.00	\$ 160,900.00	\$ 120,000.00
DUES	\$ 6,694.00	\$ 6,694.00	\$ -
PUBLICATIONS	\$ 1,050.00	\$ 1,050.00	\$ -
COPY EXPENSE	\$ 22,000.00	\$ 22,000.00	\$ -
COPY MACHINE COSTS	\$ 21,000.00	\$ 21,000.00	\$ -
TRAVEL EXPENSE	\$ 15,575.00	\$ 15,575.00	\$ -
AWARDS PROGRAM/PROMO	\$ 8,000.00	\$ 8,000.00	\$ -
SPECIAL STUDIES/PROFESSIONAL SERVICES	\$ 607,168.00	\$ 530,268.00	\$ (76,900.00)
MEETING EXPENSE	\$ 2,000.00	\$ 2,000.00	\$ -
LIABILITY INSURANCE	\$ 16,937.00	\$ 16,937.00	\$ -
REPAIRS	\$ 4,000.00	\$ 4,000.00	\$ -
NETWORK COSTS	\$ 37,220.00	\$ 37,220.00	\$ -
CAPITAL OUTLAY	\$ 5,000.00	\$ 5,000.00	\$ -
SOFTWARE	\$ 5,650.00	\$ 5,650.00	\$ -
TELEPHONE	\$ 3,600.00	\$ 3,600.00	\$ -
EDUCATION	\$ 2,000.00	\$ 2,000.00	\$ -
CONTINGENCY	\$ 50,000.00	\$ 50,000.00	\$ -
<u>EXPENSES</u>	\$ 1,820,210.00	\$ 1,743,310.00	\$ (76,900.00)
<u>BALANCE</u>	\$ -	\$ -	\$ -

**RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION
EMPLOYMENT AGREEMENT WITH EXECUTIVE DIRECTOR**

THIS AGREEMENT, made and entered into this 24 day of JUNE, 2020, by and between the River to Sea Transportation Planning Organization, an agency of the State of Florida organized and operating pursuant to Section 339.175, *Florida Statutes*, whose address, for the purposes of notice, is 2570 West International Speedway Boulevard, Suite 100, Daytona Beach, Florida 32114, hereinafter called "**R2CTPO**," and Lois Bollenback, whose address, for the purposes of notice is 30 Cochise Court, Palm Coast, Florida 32137, hereinafter called "**Employee**," both of whom understand as follows:

WITNESSTH:

WHEREAS, it is the desire of the **R2CTPO** to provide certain benefits, establish certain conditions of employment, and to set working conditions of the Employee as she continues to serve the **R2CTPO** as the Executive Director of the organizations; and

WHEREAS, it is the desire of the **R2CTPO** to accomplish the following:

1. Secure and retain the services of the **Employee** and to provide inducement for her to remain in such employment;
2. Make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security;
3. Establish employment terms which act as a deterrent against malfeasance or dishonesty for personal gain on the part of the **Employee**; and
4. Provide a just means for terminating Employee's services at such time as she may be unable to discharge her duties or when the **R2CTPO** may desire to otherwise terminate her employ; and

WHEREAS, Employee desires to continue employment as the Executive Director of the **R2CTPO**.

NOW, THEREFORE, be it agreed and resolved, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, that the parties hereto agree as follows:

Section 1: DUTIES

As established and authorized by the Interlocal Agreement for Creation of the Metropolitan Planning Organization (FDOT Form 525-010-01, Dated August 19, 2014) **R2CTPO** hereby agrees to employ Lois Bollenback as Executive Director to perform the functions and duties specified by the **R2CTPO**, and to perform such other legally permissible and proper duties and functions as the **R2CTPO** shall from time-to-time assign.

Section 2: TERM

- A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the **R2CTPO** to terminate the services of the **Employee** at any time, subject only to the provisions set forth in Section 3 A and B of this Agreement.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the **Employee** to resign at any time from his position with the **R2CTPO**, subject only to the provisions set forth in Section 3 C of this Agreement.
- C. The terms and conditions of this Agreement shall be binding on both parties and **Employee** shall serve at the pleasure of the Board of the **R2CTPO**. The length of the contract period is a three (3)-year term.

Section 3: TERMINATION, SEVERANCE PAY, AND RESIGNATION

- A. The **R2CTPO** shall provide the **Employee** sixty (60) days notice of any termination of the **Employee** without cause. In the event the **Employee** is terminated by the **R2CTPO**, without cause, during such time that **Employee** is willing and able to perform the duties of Executive Director, then, in that event, the **R2CTPO** agrees to pay **Employee** a lump sum payment equal to twenty (20) weeks base salary plus benefits and accrued Paid Time Off (PTO) (as established in Section 215.425(4)(a) *Florida Statutes*) In the event that the **Employee** is terminated due to misconduct, as defined in Section 443.036(29), *Florida Statutes*, the **R2CTPO** shall have no obligation to pay the severance sum established in this Section.
- B. In the event **R2CTPO**, at any time during the employment term, reduces the salary or other financial benefits to **Employee** in greater percentage than applicable across-the-board reduction for all **R2CTPO** employees; or in the event that the **R2CTPO** refuses, following written notice, to comply with any other provision benefiting **Employee** herein; or the **Employee** resigns following a suggestion, whether formal or informal by the **R2CTPO** that she resign without any finding of misconduct, then, in that event, the **Employee** may, at her option, be deemed to be "terminated" at the date of such reduction or refusal to comply or suggestion that the **Employee** resign. "Termination" under this condition is considered "without cause" and **Employee** would receive severance as outlined in Subsection A of this Section.
- C. In the event that the **Employee** voluntarily resigns her position with the **R2CTPO**, then **Employee** shall give the **R2CTPO** sixty (60) days advance notice. In the event that the **Employee** resigns without the required sixty (60) days advance notice, she shall promptly reimburse the **R2CTPO** for any prepaid benefits hereunder, such as pre-paid premium for life insurance, disability insurance, retirement, etc. Alternatively, the **R2CTPO** may, at its discretion, deduct such reimbursement sums from **Employee**'s final pay check provided that the **Employee** shall be, at a minimum, be paid the minimum wage established by law for the final pay check with any remaining sum due to be repaid constituting indebtedness that may be collected by any lawful means.

Section 4: SALARY

The **R2CTPO** agrees to pay the **Employee** for her services rendered pursuant hereto the following annual (twelve (12) month) amount, payable in equal installments at the same time as other employees of the **R2CTPO** staff are paid:

Effective March 1, 2020..... \$120,000

The **R2CTPO** shall conduct a performance evaluation of the **Employee** on an annual basis, at least (3) months prior to the anniversary date of this Agreement, and shall occur subsequent to the recommendation of the Executive Committee being made no later than November 30 of each year. The **R2CTPO** shall utilize the **Employee's** annual performance evaluation as a basis for negotiation for salary or any other parts of this Agreement. Any subsequent salary increases shall be based upon the **Employee's** performance.

Section 5: HOURS OF WORK

The **Employee** agrees to maintain regular office hours during the hours that the **R2CTPO** conducts its business, from 8:00 am to 5:00 pm, Monday through Friday (excluding holidays and emergency closing days). In addition, it is recognized by the **Employee** that she will be required to also devote time outside of the normal office hours to conduct the business of the **R2CTPO**.

Section 6: AUTOMOBILE

The **Employee's** duties require that she shall require and have the exclusive use of an automobile at all times during her employment with the **R2CTPO**. To this end, the **Employee** is required to have and maintain a valid Florida driver's license and maintain a good driving record. The **R2CTPO** shall pay the **Employee** five hundred dollars (\$500.00) per month as an automobile allowance. The **Employee** shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase, operation, maintenance, repair, and regular replacement of said automobile. For any travel outside of the Metropolitan Planning Area (MPA) boundary applicable to the **R2CTPO**, the **Employee** shall be paid the standard mileage rate as approved for all employees.

Section 7: DUES AND SUBSCRIPTIONS

The **R2CTPO** agrees to budget and to pay a reasonable amount toward the professional and civic organization dues and subscriptions of the **Employee** necessary for her continuation and full participation in national, regional, State, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and the good of the **R2CTPO**, subject to Executive Committee approval.

Section 8: PROFESSIONAL DEVELOPMENT

The **R2CTPO** hereby agrees to budget and to pay the travel and subsistence expenses of the **Employee** for professional and official travel, meetings, and occasions adequate to continue the professional development of the **Employee** and to adequately pursue necessary official and other

functions for the **R2CTPO**. The amount so budgeted and paid shall be a reasonable amount subject to Executive Committee approval. Any outside engagements not related to the **Employee's** professional responsibilities shall not interfere with the **Employee's** professional responsibility to this position.

Section 9: GENERAL EXPENSES

The **R2CTPO** recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the **Employee** and agrees to reimburse or to pay said general expenses including, but not limited to, cellular telephone use. The **R2CTPO** hereby authorizes its Chief Financial Officer to disburse such monies upon receipt of appropriate expense or petty cash vouchers, receipts or statements for approval and any expenses disallowed will be reimbursed by the **Employee** to the **R2CTPO**. The particular procedures, limitations, and funding shall be as agreed between the **Employee** and the Chief Financial Officer, subject to the right of the **R2CTPO** to limit such expenses to a maximum of \$250.00 per occurrence.

Section 10: PAID TIME OFF (PTO)

The **Employee** shall accrue and have credited to her personal account, Paid Time Off (PTO) leave at the same rate as other employees serving as staff to the **R2CTPO**. Accrued PTO shall be forfeited in the event that **Employee** voluntarily resigns her position with **R2CTPO** without giving notice as required by Section 3 C of this Agreement.

Section 11: HEALTH INSURANCE

The **R2CTPO** agrees to provide hospitalization, surgical, and comprehensive medical insurance for the **Employee**, and her family, and to pay the premiums necessary to maintain that insurance; equal to that which is provided for all other employees serving as staff to the **R2CTPO**.

Section 12: RETIREMENT (PENSION PLAN)

The **Employee** is a participant in the Principal Financial Group Money Purchase Plan. The **R2CTPO** agrees to contribute each year to the **Employee's** retirement account nine and eighty-five one hundredths percent (9.85%) of the **Employee's** annual base salary. This is the current rate set by the **R2CTPO**, and any changes made by the **R2CTPO** to the pension plan will be addressed at that time. This rate shall not be applied to any auto allowance or other benefit.

Section 13: LIFE INSURANCE

The **R2CTPO** agrees to provide life insurance for the **Employee** equal to three (3) times **Employee's** annual salary.

Section 14: RECORDS

All records, statements, files, financial, and other information shall be the property of the **R2CTPO**, as the case may be, and in the event her employment terminates for any reason, the **Employee** shall have no right to retention of such records.

Section 15: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The **R2CTPO** shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the **Employee**, provided such terms and conditions are not in conflict with the provisions of this Agreement or any law.
- B. All provisions and rules of the **R2CTPO** relating to **R2CTPO**, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the **Employee** as they would to other employees of the **R2CTPO**, in addition to said benefits enumerated specifically for the benefit of the **Employee**, except as herein provided.
- C. The Chair of the **R2CTPO**, or in his/her absence, the Vice-Chair shall be the **Employee's** immediate supervisor.
- D. All amendments, alterations, or additions to this Agreement shall be in writing, shall be approved by the **R2CTPO** Board and the **Employee**, and shall be provided to the **R2CTPO** Office Manager for retention as part of the personnel file for the **Employee** which shall include this Agreement. An executed or certified copy shall be furnished to the **Employee** and a copy to the Chair of the **R2CTPO**.
- E. If any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed several, shall not be affected, and shall remain in full force and effect.

Section 16: INDEMNIFICATION

The **R2CTPO** shall defend, save, hold harmless and indemnify the **Employee** against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the lawful performance of the **Employee's** duties as Executive Director. The **R2CTPO** may compromise and settle any such claim or suit and pay the amount of settlement or judgment rendered thereon.

Section 17: GOVERNING LAW, VENUE, AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue and jurisdiction as to any legal action commenced by any party hereto shall only be in the state court in and for Volusia County, Florida, and the parties hereto consent to such venue and exclusive jurisdiction of both person and subject matter.

Section 18: ATTORNEY'S FEES AND COSTS

In the event that either party hereto brings suit for the collection of any damages resulting from, or the injunction of any action constituting, a breach of any of the terms or provisions of this Agreement, the prevailing party shall be entitled to receive from the other party such costs and attorney's fees as the prevailing party incurred in connection with the suit.

Section 19: ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and, upon its execution and approval, shall supersede all prior agreements, understandings and arrangements, both oral and written, between the parties with respect to such subject matter. This Agreement may not be modified in any way unless by a written instrument signed by both parties.

Section 20: CONSTRUCTION

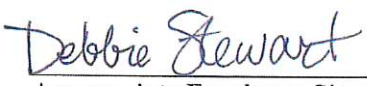
Each and every term of this Agreement has been mutually agreed to and negotiated by the parties hereto, and shall be construed simply according to its fair meaning and not strictly for or against any party.

IN WITNESS WHEREOF, the R2CTPO has caused this Agreement to be duly signed and executed in its behalf by its Chair and duly attested to in an appropriate manner; and the Employee has caused this Agreement to be executed, both in duplicate, the day and year first written above.

**RIVER TO SEA TRANSPORTATION
PLANNING ORGANIZATION:**


Robert A. Gilliland, Chair

ATTEST:


Appropriate Employee Signature
Printed Name: Debbie Stewart

EMPLOYEE:


Lois Bollenback

ATTEST:


Witness

APPROVED AS TO LEGAL SUFFICIENCY:


LONNIE GROOT
RIVER TO SEA TPO BOARD ATTORNEY

Proposed Letter of Agreement & Terms & Conditions
Between the River to Sea Transportation Planning Organization (R2CTPO)

&

Colleen Nicoulin
(Interim Executive Director)

April 6, 2022

Duties: Interim Executive Director shall perform the duties of Executive Director as specified in the attached Job Description throughout the term of this Letter of Agreement and shall perform such other legally permissible and proper duties as the Board of Directors may assign to her. It is recognized by the parties that Colleen Nicoulin was initially appointed as Interim Executive Director ~~on~~ effective July 23³⁰, 2021, and the parties wish to extend that appointment for an additional ~~nine-six~~ (96) months subject to the terms and conditions of this Letter of Agreement.

At Will Employee: Interim Executive Director shall serve at the pleasure of the R2CTPO Board of Director's and shall be considered an at-will employee in the position of the Interim Executive Director. It is noted that the R2CTPO Board of Directors may terminate the Interim Executive Director's employment with or without cause by a majority vote of the entire membership of the R2CTPO Board of Directors, subject to the provisions in this Letter of Agreement.

Effective Date: TBD based upon acceptance by the R2CTPO Board of Directors and Interim Executive Director

Term: ~~Nine-Six~~ (96) months from the effective date, but in no event later than October 31, 2022, unless said date is agreed to be extended by the parties hereto.

Base Salary: ~~\$120,000~~ \$124,800 annually paid in equal installments in a manner consistent with R2CTPO practices.

Performance Evaluation Process: The R2CTPO ~~Board of Directors~~ Executive Committee ~~(or Executive Committee?)~~ shall assess the performance of the Interim Executive Director in a formal evaluation subject to a process, form, criteria, and format which shall be mutually agreed upon by the ~~Board~~ Executive Committee and the Interim Executive Director ~~approximately within six~~ (6) months following the effective date of this Letter of Agreement. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Interim Executive Director within thirty (30) days of the evaluation meeting. ~~The Interim Executive Director's compensation and/or benefits may be adjusted as deemed appropriate by the Board~~ Following the performance review, the Executive Committee may recommend to the R2CTPO and the Board of Director's shall advise the Interim Executive Director of their desire to appoint her that the Interim Executive Director be appointed as the regular R2CTPO's Executive Director and recommend adjustments to compensation and benefits as deemed appropriate, or alternatively seek her continuance as Interim Executive Director while the Board of Directors undertakes a recruitment for the Executive Director.

Other Termination: It is understood by the parties that there are certain bases for termination of employment under which there shall be no obligation on the R2CTPO's part to provide the Interim Executive Director any salary or benefits beyond the effective date of termination. These bases for termination include:

- ~~1. Voluntary resignation by Interim Executive Director~~
- ~~2. Interim Executive Director's death~~
- ~~3. Permanent disability that renders the Interim Executive Director unable to perform her duties~~
- ~~4.1.~~ By mutual agreement by the parties;
- ~~5.2.~~ Any act of moral turpitude on Interim Executive Director's part; or
- ~~6.3.~~ Interim Executive Director is terminated for just cause, defined as:
 - a. Conviction of any serious crime or breach of public trust (other than a traffic offense), or,
 - b. Violation of terms of the Letter of Agreement, or
 - c. Gross neglect of duties on Interim Executive Director's part, provided that she was given, in writing, notice of specific allegations of gross neglect and failed to substantially cure such deficiencies within 30 days, or once cured, such gross neglect becomes chronic
- ~~7.4.~~ In the event of material breach of this Letter of Agreement by the R2CTPO, the Interim Executive Director may make a written request for correction on the R2CTPO's part. Failure on the part of the Interim Executive Director to do so in writing within thirty (30) days or fewer shall constitute a waiver on the part of the Interim Executive Director to seek a correction of the ~~affect a~~ termination of the Letter of Agreement.

Contracts in Excess of \$10,000: As provided by Appendix II to 2 C.F.R. Part 200, all Agreements in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement. The basis for termination for cause is set forth above. The Interim Executive Director may be terminated for convenience by the TPO Governing Board upon thirty (30) days written notice; provided, that at such termination, the Interim Executive Director shall revert to her prior position as Manager of Operations and Planning as described below. The TPO shall pay the Interim Executive Director for work completed to the date of termination.

Hours of Work: It is recognized that the Interim Executive Director's will devote ~~a significant amount of~~ time outside the normal office hours to the performance of her duties for the R2CTPO, and the Interim Executive Director will be allowed to establish an appropriate work schedule consistent with the professional nature of her employment.

Development of ~~R2CTPO~~ Executive Director Strategic Plan: The Interim Executive Director shall draft and ~~submit~~ present a proposed ~~R2CTPO~~ Executive Director Strategic Plan to the ~~Board of Directors~~ Executive Committee within ~~two~~ three months of the effective date of this Letter of Agreement to identify the Executive Director's Plan of Action for advancing the organization. ~~organization's strengths, weaknesses, opportunities, threats, challenges and opportunities, and proposed goals and objectives for the Board's consideration.~~

Filling of Existing Staff Vacancies: It is recognized by the parties that the R2CTPO has been operating without a number of approved full-time positions over the last several months, and the Interim Executive Director shall be authorized to commence actions to recruit and fill such vacancies or utilize the services of outside consultants or resources subject to R2CTPO practices and policies during the term of this Letter of Agreement.

Existing Employee Benefits: The Interim Executive Director shall continue to receive all benefits accrued to current full-time employees based upon her experience and tenure with the R2CTPO throughout the term of this Letter of Agreement as may presently exist or may be added, deleted, or changed from time to time for full-time employees of the R2CTPO.

~~**Other Employment:** Interim Executive Director agrees to devote her full attention and best efforts to her duties per the attached job description, and she shall not become employed by any other employer while employed by the R2CTPO or accept voluntary positions that detract from her ability to perform her duties.~~

Resumption of Duties as Manager of Operations & Planning: In the event the ~~Board of Director's~~ Executive Committee does not make a recommendation to the TPO Board to offer the Interim Executive Director the regular Executive Director position following the six-month performance evaluation, or should the Interim Executive Director elect to not accept the regular Executive Director position, she shall be entitled to resume her previous duties as the R2CTPO's Manager of Operations & Planning position following the completion of her responsibilities and remaining term as Interim Executive Director. Under such a circumstance, she shall be provided with the established salary of the position with the applicable Cost of Living Adjustments (COLA) and benefits in accordance ~~then applicable compensation and benefits accorded to an employee~~ with her experience and organizational tenure consistent with the R2CTPO's personnel policies and procedures.

Resignation: Interim Executive Director shall provide as much notice as possible in advance of her voluntary resignation of her position with the R2CTPO, but not less than thirty (30) days.

Miscellaneous: This Letter of Agreement sets forth and establishes the entire understanding between the R2CTPO and Interim Executive Director concerning the employment relationship of the parties. All prior discussions or representatives by or between the parties have been merged into this Letter of Agreement. The parties by mutual written agreement may amend any provision of this Agreement during its terms. Any such amendments shall be incorporated into and made a part of this Agreement. This Agreement will be binding on the R2CTPO, and its successors, and on the Interim Executive Director, and her heirs and personal representatives. This Letter of Agreement shall become effective upon its execution by each party following its approval by the R2CTPO Board of Directors, which effective date shall be written at the top of the first page of this Letter of Agreement. This Letter of Agreement and the relationship of the parties will be governed and construed under the laws of the State of Florida. The invalidity or partial invalidity of any portion of this Letter of Agreement will not affect the validity of any other provision. Should a court of competent jurisdiction hold any provision of this Letter of Agreement to be invalid, the remaining provisions will be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Indemnification: To the extent permitted by Section 11.07, Florida Statutes, the TPO will provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action by or of the Interim Executive Director for an act or omission arising out of and in the course and scope of its employment or function, unless, the Interim Executive Director has acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief personally against the Interim Executive Director for an act or omission under color of state law, custom, or usage, wherein it is alleged that the Interim Executive Director has deprived another person of rights secured under the Federal Constitution or laws. Any attorney's fees paid from

public funds for the Interim Executive Director who is later found to be personally liable by virtue of acting outside the scope of its employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the TPO in a civil action against the Interim Director. This section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of April, 2022.

RIVER TO SEA TRANSPORTATION
PLANNING ORGANIZATION, a legal entity
Formed by Interlocal Agreement pursuant
to Section 339.175, Florida Statutes

By: _____
Billie Wheeler, Chair

ATTEST:

_____, Agency Clerk

INTERIM EXECUTIVE DIRECTOR:

Colleen Nicoulin

RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION

JOB DESCRIPTION: EXECUTIVE DIRECTOR

REPORTS TO: TPO Board

EXEMPT STATUS: Exempt (Administrative)

SALARY RANGE: \$120,000 – \$160,000 (annually)

TYPE OF POSITION: Regular, Full-time

REVISION: September 1, 2021

POSITION GENERAL SUMMARY: The Executive Director provides leadership, oversight and direction for all operational functions of the River to Sea ("TPO"). The Executive Director coordinates the TPO and collaborates with partner agencies, including the Florida Department of Transportation ("FDOT"), the Florida Metropolitan Planning Organization Advisory Council ("MPOAC"), Central Florida MPO Alliance, the East Central Florida Regional Planning Council, the Federal Highway Administration, Federal Transit Administration, and local agencies such as Volusia County, Flagler County, the Volusia County School Board, the Flagler County School Board, and municipalities located within the jurisdiction of the TPO in Volusia and Flagler Counties. To the extent that the TPO Governing Board determines and that the TPO budget may permit, the Executive Director may also be active in national the National Association of Regional Councils and the Association of Metropolitan Planning Organizations.

This position reports directly to the TPO Governing Board. Between Governing Board meetings, the position reports to the TPO Executive Committee or the TPO Chair. The TPO Executive Director is responsible for providing assistance and professional recommendations on fiscal matters including the preparation of the annual budget, policy considerations, strategic planning, local and regional transportation initiatives and legislative issues and activities. The Executive Director represents the TPO at meetings, conventions, and other forums to promote and explain agency mission and objectives. This position is responsible for ensuring that the River to Sea TPO maintains federal certification and provides leadership and consultation to government agencies, the business community, private organizations, the press and public to explain and resolve complex issues and to coordinate activities related to the transportation system.

The Executive Director is the face of the organization and assists in creating and directing policy decisions which affect transportation in East Central Florida. The Executive Director is based in the TPO headquarters and is allowed to access the building at all times of day and all days of the week. The Executive Director works with minimal supervision and must initiate projects and tasks independently, bringing them to conclusion and presenting the results to the various committees and Governing Board. Self-direction and self-motivation are key personal attributes of this position. The Executive Director also supervises and provides overall direction to all TPO employees. The Executive Director is responsible for final hiring, discipline, suspension, or termination decisions relating to all TPO employees, subject to any rights provide in the TPO By-Laws or personnel procedures.

ESSENTIAL POSITION FUNCTIONS:

- Provides direction to ensure the accurate and timely completion and submission of essential planning documents, including the Transportation Improvement Plan ("TIP"), the Unified Planning Work Program ("UPWP"), and the Long Range Transportation Plan ("LRTP"), all in accordance with required deadlines and Florida and federal law and administrative regulations.
- Directs and oversees the development, communication and advancement of program activities through interaction with advisory and other committees, such as the Executive Committee, Transportation Advantaged Local Coordinating Board, the Technical Coordinating Committee ("TCC"), the Citizens Advisory Committee ("CAC"), and the Bicycle/Pedestrian Advisory Committee ("BPAC"), community organizations, planning professionals, elected officials and the public.
- Provides overall staff management for the TPO.
- Directs the organization of meetings and preparation of agendas and supporting materials.
- Provides direction and support for agenda development, determination of required materials and meeting participation for the TPO Governing Board, Executive Committee, TCC and CAC meetings and other subcommittees and working groups as needed.
- Directs, reviews and develops project scopes of service and requests for proposals and makes work assignments to ensure effective, professional project management for planning studies, data collection efforts and other key activities of the TPO.
- Reviews and interprets official directives, legislation, rules and correspondence to determine possible changes in agency programs, policies, and procedures.
- Serves as the principle policy advisor to the MPOAC on Federal and State transportation planning activities.
- Prepares or directs preparation and release of reports, studies and other publications relating to program trends and accomplishments.
- Provides leadership, counseling and direction to staff and prepares performance evaluations.
- Reviews and evaluates the work effort of agency staff in coordination with the Senior Transportation Planner through conversations, meetings, and reports.
- Oversees the financial activities of the organization with direct support and input from the Accounting Manager including, but not limited to, the completion of an annual budget, UPWP, progress reports for agency grants and execution of grants and agreements.
- Participates in program related training, conferences and special events.
- Supports and promotes TPO activities by responding to public inquiries, attending community functions and representing the organization at various functions including, but not limited to, the MPOAC, the Central Florida MPO Alliance and the Commuter Rail TAC.
- Facilitating the continued evolution of the organization consistent with the vision of the MPOAC Governing Board.
- Monitors and reviews proposed federal and Florida legislation that may affect MPOs, providing comments as needed in writing or verbally; acts as a resource for the Florida Legislature and the local legislative delegation regarding the TPO and transportation planning.
- Maintains a flexible schedule and regular attendance to meet the myriad demands of the TPO Governing Board and Executive Committee.
- Provides other organizational support as required.

MINIMUM REQUIREMENTS:

Education and Experience:

- B.A., B.S., or similar degree, preferably in public administration, planning, urban studies, business administration, political science, or closely related field; supplemented by seven (7) or more years' experience in the field of planning with a Metropolitan Planning Organization, the U.S. Department of Transportation, a state Department of Transportation, or working with a private sector firm in planning. At least five of those years served in a managerial position. Under limited circumstances, an equivalent combination of education and/or experience may be substituted for the minimum qualifications at the discretion of the TPO. While not required a Master's degree in Planning, Business Administration, Public Administration, Finance, or related field is preferred considered a plus.
- Must have a valid Florida Driver's License and be insurable by an insurance carrier.

KNOWLEDGE, ABILITIES, AND SKILLS:

- Working knowledge of computer applications including Microsoft Word, Excel, Outlook, Mozilla, PowerPoint, Access, and e-mail;
- Must be fluent in English and speak in a clear, understandable, and distinct manner;
- Functional understanding of traffic modeling programs such as FSUTMS/Cube Voyager and other applications used by the TPO, FDOT, FHWA, or FTA, such as ArcGIS, Crystal Reports, and ADOBE Acrobat;
- Knowledge of FDOT, FHWA, and FTA standards, policies and requirements for agency planning documents;
- Knowledge of Florida's Growth Management legislation and federal and state transportation legislation;
- General public administration including budgeting, personnel policies and file management;
- Knowledge of transportation and land-use issues;
- Experienced in establishing and maintaining effective working relationships among staff, contractors, committees and customers in a manner conducive to full performance and positive morale;
- Experienced in providing effective guidance and oversight to personnel, conflict resolution and organizational leadership to create a cohesive working environment;
- Ability to communicate effectively both orally and in writing;
- Ability to gather, study, and analyze data and other relevant transportation related information;
- Ability to understand, interpret, and apply procedures, principals and laws;
- Ability to direct and work through subordinates to establish policies, set priorities and render decisions in administering or managing all or part of the activities of the agency;
- Ability to mediate, moderate and resolve conflicts;
- Ability to understand complex issues and explain them in "plain speak";
- Ability to manage and prioritize multiple and complex tasks with time and budget constraints.
- Ability to work with minimal supervision and direction and to initiate projects, and activities without direction.
- Ability to work under pressure/stress with an extreme level of accuracy.
- Ability to serve as a public spokesperson and speak to large groups;
- Ability to write clearly and authoritatively as a subject expert on transportation related matters;
- Ability to make judgments based on experience as well as verifiable facts and figures;

- Ability to develop long range or future projects; and
- Ability to establish and maintain effective working relationships with the Board, outside agencies, organizations, individuals or groups of people with diverse interests.

PHYSICAL REQUIREMENTS AND ENVIRONMENTAL CONDITIONS:

- Works typically in an office environment though providing support to the TPO will sometimes require attending meetings, which will be in a public meeting environment that may be crowded and sometimes loud.
- Ability to lift and carry 40 pounds as occasionally required.
- Moderate physical activity, supporting community events, sometimes in outdoor environments and requiring prolonged standing.
- The employee is generally sedentary, but may occasionally be required to stand, walk, stoop, kneel, or bend at the waist.
- Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.
- Specific hearing abilities required by this job include the ability to hear and speak to communicate in person, before groups, and over the telephone.

WORK AUTHORIZATIONS AND SECURITY CLEARANCE:

- The employee must successfully pass a criminal and credit background.
- The TPO will also verify the identity and employment authorization of individuals hired. Proper completion of Form I-9 is required, which includes the employee providing documents evidencing identity and employment authorization.
- The TPO is a drug-free workplace as provided in Section 440.101 *et seq.*, Florida Statutes. The employee may be subject to drug and alcohol screens, as permitted by law.

OTHER DUTIES:

The above information is intended to indicate the general nature and level of work performed by the employee in this position. This description is not intended to contain or be interpreted as a comprehensive inventory of all essential and marginal duties and qualifications required of employees assigned to this position. Duties, responsibilities and activities may change at any time with or without notice

(Reasonable accommodations will be made in accordance with existing Americans with Disabilities Act ("ADA") requirements for otherwise qualified individuals with a disability.)

Employee: _____

River to Sea TPO Chair: _____

Proposed Letter of Agreement & Terms & Conditions
Between the River to Sea Transportation Planning Organization (R2CTPO)
&
Colleen Nicoulin
(Interim Executive Director)
April 6, 2022

Duties: Interim Executive Director shall perform the duties of Executive Director as specified in the attached Job Description throughout the term of this Letter of Agreement and shall perform such other legally permissible and proper duties as the Board of Directors may assign to her. It is recognized by the parties that Colleen Nicoulin was initially appointed as Interim Executive Director on July 23, 2021, and the parties wish to extend that appointment for an additional nine (9) months subject to the terms and conditions of this Letter of Agreement.

At Will Employee: Interim Executive Director shall serve at the pleasure of the R2CTPO Board of Director's and shall be considered an at-will employee. It is noted that the Board of Directors may terminate the Interim Executive Director's employment with or without cause by a majority vote of the entire Board of Directors, subject to the provisions in this Letter of Agreement.

Effective Date: TBD based upon acceptance by the R2CTPO Board of Directors and Interim Executive Director

Term: Nine (9) months from the effective date.

Base Salary: \$120,000 paid in equal installments in a manner consistent with R2CTPO practices.

Performance Evaluation Process: The R2CTPO Board of Directors (or Executive Committee?) shall assess the performance of the Interim Executive Director in a formal evaluation subject to a process, form, criteria, and format which shall be mutually agreed upon by the Board and the Interim Executive Director approximately six (6) months following the effective date of this Letter of Agreement. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Interim Executive Director within thirty (30) days of the evaluation meeting. The Interim Executive Director's compensation and/or benefits may be adjusted as deemed appropriate by the Board following the performance review, and the Board of Director's shall advise the Interim Executive Director of their desire to appoint her as the regular R2CTPO's Executive Director, or alternatively seek her continuance as Interim Executive Director while the Board of Directors undertakes a recruitment for the Executive Director.

Other Termination: It is understood by the parties that there are certain bases for termination of employment under which there shall be no obligation on the R2CTPO's part to provide the Interim Executive Director any salary or benefits beyond the effective date of termination. These bases for termination include:

1. Voluntary resignation by Interim Executive Director
2. Interim Executive Director's death
3. Permanent disability that renders the Interim Executive Director unable to perform her duties
4. By mutual agreement by the parties
5. Any act of moral turpitude on Interim Executive Director's part, or
6. Interim Executive Director is terminated for just cause, defined as:
 - a. Conviction of any serious crime or breach of public trust (other than a traffic offense), or,
 - b. Violation of terms of the Letter of Agreement, or
 - c. Gross neglect of duties on Interim Executive Director's part, provided that she was given, in writing, notice of specific allegations of gross neglect and failed to substantially cure such deficiencies within 30 days, or once cured, such gross neglect becomes chronic
7. In the event of material breach of this Letter of Agreement by the R2CTPO, the Interim Executive Director may make a written request for correction on the R2CTPO's part. Failure to do so in thirty (30) days or fewer shall affect a termination of the Letter of Agreement.

Hours of Work: It is recognized that the Interim Executive Director's will devote a significant amount of time outside the normal office hours to the performance of her duties for the R2CTPO, and the Interim Executive Director will be allowed to establish an appropriate work schedule consistent with the professional nature of her employment.

Development of R2CTPO Strategic Plan: The Interim Executive Director shall draft and submit a proposed R2CTPO Strategic Plan to the Board of Directors within two months of the effective date of this Letter of Agreement to identify the organization's strengths, weaknesses, opportunities, threats, challenges and opportunities, and proposed goals and objectives for the Board's consideration.

Filling of Existing Staff Vacancies: It is recognized by the parties that the R2CTPO has been operating with a number of approved full-time positions over the last several months, and the Interim Executive Director shall be authorized to commence actions to recruit and fill such vacancies subject to R2CTPO practices and policies during the term of this Letter of Agreement.

Existing Employee Benefits: The Interim Executive Director shall continue to receive all benefits accrued to current full-time employees based upon her experience and tenure with the R2CTPO throughout the term of this Letter of Agreement as may presently exist or may be added, deleted, or changed from time to time for full-time employees of the R2CTPO.

Other Employment: Interim Executive Director agrees to devote her full attention and best efforts to her duties per the attached job description, and she shall not become employed by any other employer while employed by the R2CTPO or accept voluntary positions that detract from her ability to perform her duties.

Resumption of Duties as Manager of Operations & Planning: In the event the Board of Director's does not offer the Interim Executive Director the regular Executive Director position following the six-month performance evaluation, she shall be entitled to resume her previous duties as the R2CTPO's Manager of Operations & Planning position following the completion of her responsibilities and remaining term as Interim Executive Director. Under such a circumstance, she shall be provided with the then applicable compensation and benefits accorded to an employee with her experience and organizational tenure consistent with the R2CTPO's personnel policies and procedures.

Resignation: Interim Executive Director shall provide as much notice as possible in advance of her voluntary resignation of her position with the R2CTPO, but not less than thirty (30) days.

Miscellaneous: This Letter of Agreement sets forth and establishes the entire understanding between the R2CTPO and Interim Executive Director concerning the employment relationship of the parties. All prior discussions or representatives by or between the parties have been merged into this Letter of Agreement. The parties by mutual written agreement may amend any provision of this Agreement during its terms. Any such amendments shall be incorporated into and made a part of this Agreement. This Agreement will be binding on the R2CTPO, and its successors, and on the Interim Executive Director, and her heirs and personal representatives. This Letter of Agreement shall become effective upon its execution by each party following its approval by the R2CTPO Board of Directors, which effective date shall be written at the top of the first page of this Letter of Agreement. This Letter of Agreement and the relationship of the parties will be governed and construed under the laws of the State of Florida. The invalidity or partial invalidity of any portion of this Letter of Agreement will not affect the validity of any other provision. Should a court of competent jurisdiction hold any provision of this Letter of Agreement to be invalid, the remaining provisions will be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Proposed Letter of Agreement & Terms & Conditions
Between the River to Sea Transportation Planning Organization (R2CTPO or TPO)
&
Colleen Nicoulin
(Interim Executive Director)
April 6, 2022

Duties: Interim Executive Director shall perform the duties of Executive Director as specified in the attached Job Description throughout the term of this Letter of Agreement and shall perform such other legally permissible and proper duties as the Board of Directors may assign to her. It is recognized by the parties that Colleen Nicoulin was initially appointed as Interim Executive Director on July 23, 2021, and the parties wish to extend that appointment for an additional nine (9) months subject to the terms and conditions of this Letter of Agreement.

At Will Employee: Interim Executive Director shall serve at the pleasure of the R2CTPO Board of Director's and shall be considered an at-will employee in the position of Interim Executive Director. It is noted that the TPO Governing Board, or the TPO Executive Committee, Board of Directors may terminate the Interim Executive Director's employment with or without cause by a majority vote of the entire membership of the TPO Governing Board, or the TPO Executive Committee, Board of Directors, subject to the provisions in this Letter of Agreement.

Effective Date: TBD based upon acceptance by the R2CTPO Board of Directors and Interim Executive Director

Term: Nine (9) months from the effective date, but in no event later than January 31, 2023, unless said date is extended by the parties hereto.

a. **Base Salary:** \$120,000 per year paid in equal installments in a manner consistent with R2CTPO practices. During the term of this Letter of Agreement, any Cost of Living Adjustments (COLA) approved by the Executive Committee or the TPO Governing Board for TPO employees, or for the Interim Executive Director, shall also be applied to the Interim Director's base salary, which upon application shall become the new base salary of the Interim Director.

Performance Evaluation Process: The R2CTPO Executive Committee Board of Directors (or Executive Committee?) shall assess the performance of the Interim Executive Director in a formal evaluation subject to a process, form, criteria, and format which shall be mutually agreed upon by the Executive Committee Board and the Interim Executive Director approximately six (6) months following the effective date of this Letter of Agreement. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Interim Executive Director within thirty (30) days of the evaluation meeting. The Interim Executive Director's compensation and/or benefits may be adjusted as deemed appropriate by the Executive Committee Board following the performance review, and the TPO Executive Committee Board of Director's shall advise the Interim Executive Director of their desire to appoint her as the regular R2CTPO's Executive

Director, or alternatively seek her continuance as Interim Executive Director while the TPO Executive Committee, Board of Directors undertakes a recruitment for the Executive Director.

Other Termination: It is understood by the parties that there are certain bases for termination of employment under which there shall be no obligation on the R2CTPO's part to provide the Interim Executive Director any salary or benefits beyond the effective date of termination; provided, that if she is not offered the position of Executive Director following the six month evaluation period referenced above, that she shall return to her previous position as Manager of Operations & Planning as set forth below. These bases for termination include:

1. Voluntary resignation by Interim Executive Director;
2. Interim Executive Director's death;
3. Permanent disability that renders the Interim Executive Director unable to perform her duties;
4. By mutual agreement by the parties;
5. Any act of moral turpitude on Interim Executive Director's part;¹ or
6. Interim Executive Director is terminated for just cause, defined as:
 - a. Conviction of any serious crime or breach of public trust (other than a traffic offense), or,
 - b. Violation of terms of the Letter of Agreement, or
 - c. Gross neglect of duties on Interim Executive Director's part, provided that she was given, in writing, notice of specific allegations of gross neglect and failed to substantially cure such deficiencies within 30 days, or once cured, such gross neglect becomes chronic
7. In the event of material breach of this Letter of Agreement by the R2CTPO, the Interim Executive Director may make a written request for correction on the R2CTPO's part. Failure on the part of the Interim Executive Director to do so in writing within thirty (30) days or fewer shall constitute a waiver on the part of the Interim Executive Director to seek a correction of the affect-a termination of the Letter of Agreement.

Contracts In Excess of \$10,000: As provided by Appendix II to 2 C.F.R. Part 200, all Agreements in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. The basis for termination for cause is set forth above. The Interim Executive Director may be terminated for convenience by the TPO Governing Board upon thirty days written notice; provided, that at such termination, the Interim Executive Director shall revert to her prior position as Manager of Operations and Planning as described below. The TPO shall pay the Interim Executive Director for work completed to the date of termination. The TPO reserves the right and is hereby granted the right to direct the Interim Executive Director to complete any outstanding approved work activities.

¹ "Moral turpitude" is defined as a "[c]onduct that is contrary to justice, honesty, or morality, esp. an act that demonstrates depravity." See Black's Law Dictionary at 1163 (10th ed. Thomson Reuters 2014). Florida courts have defined moral turpitude as "the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society." Florida courts have specifically held that manslaughter by culpable negligence is a crime of moral turpitude. The courts have also found bookmaking to be a crime of moral turpitude. The courts have determined that a physician selling bogus diplomas and licenses committed a crime of moral turpitude. However, certain crimes, such as possession of a controlled substance have been held not to be a crime of moral turpitude. Scott Harris, Attorneys at Law at www.scott-harris.com/articles/what-is-moral-turpitude/.

Hours of Work: It is recognized that the Interim Executive Director's will devote a significant amount of time outside the normal office hours to the performance of her duties for the R2CTPO, and the Interim Executive Director will be allowed to establish an appropriate work schedule consistent with the professional nature of her employment.

Development of R2CTPO Strategic Plan: The Interim Executive Director shall draft and submit a proposed R2CTPO Strategic Plan to the Board of Directors within 60 days ~~two months~~ of the effective date of this Letter of Agreement to identify the organization's strengths, weaknesses, opportunities, threats, challenges and opportunities, and proposed goals and objectives for the Executive Committee ~~Board's~~ consideration.

Filling of Existing Staff Vacancies: It is recognized by the parties that the R2CTPO has been operating with a number of approved full-time positions over the last several months, and the Interim Executive Director shall be authorized to commence actions to recruit and fill such vacancies subject to R2CTPO practices and policies during the term of this Letter of Agreement.

Existing Employee Benefits: The Interim Executive Director shall continue to receive all benefits accrued to current full-time employees based upon her experience and tenure with the R2CTPO throughout the term of this Letter of Agreement as may presently exist or may be added, deleted, or changed from time to time for full-time employees of the R2CTPO.

Other Employment: Interim Executive Director agrees to devote her full attention and best efforts to her duties per the attached job description, and she shall not become employed by any other employer while employed by the R2CTPO or accept voluntary positions that detract from her ability to perform her duties.

Resumption of Duties as Manager of Operations & Planning: In the event the Executive Committee ~~Board of Directors~~ does not offer the Interim Executive Director the regular Executive Director position following the six-month performance evaluation, she shall be entitled to resume her previous duties as the R2CTPO's Manager of Operations & Planning position following the completion of her responsibilities and remaining term as Interim Executive Director. Under such a circumstance, she shall be provided with the then applicable compensation and benefits accorded to an employee with her experience and organizational tenure consistent with the R2CTPO's personnel policies and procedures.

Resignation: Interim Executive Director shall provide as much notice as possible in advance of her voluntary resignation of her position with the R2CTPO, but not less than thirty (30) days.

Miscellaneous: This Letter of Agreement sets forth and establishes the entire understanding between the R2CTPO and Interim Executive Director concerning the employment relationship of the parties. All prior discussions or representatives by or between the parties have been merged into this Letter of Agreement. The parties by mutual written agreement may amend any provision of this Agreement during its terms. Any such amendments shall be incorporated into and made a part of this Agreement. This Agreement will be binding on the R2CTPO, and its successors, and on the Interim Executive Director, and her heirs and personal representatives. This Letter of Agreement shall become effective upon its execution by each party following its approval by the R2CTPO Board of Directors, which effective date shall be written at the top of the first page of this Letter of Agreement. This Letter of Agreement and the relationship of the parties will be governed and construed under the laws of the State of Florida. The invalidity or partial invalidity of any portion of this Letter of Agreement will not affect the validity of any

other provision. Should a court of competent jurisdiction hold any provision of this Letter of Agreement to be invalid, the remaining provisions will be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Indemnification: To the extent permitted by Section 11.07, Florida Statutes, the TPO will provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action by or of the Interim Executive Director for an act or omission arising out of and in the course and scope of its employment or function, unless, the Interim Executive Director has acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief personally against the Interim Executive Director for an act or omission under color of state law, custom, or usage, wherein it is alleged that the Interim Executive Director has deprived another person of rights secured under the Federal Constitution or laws. Any attorney's fees paid from public funds for the Interim Executive Director who is later found to be personally liable by virtue of acting outside the scope of its employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the TPO in a civil action against the Interim Director. This section shall survive the termination of this Agreement.

Public Entity Crimes: In accordance with Sections 287.132 and 287.133, Florida Statutes, by entering into this Agreement or performing any Work in furtherance hereof, the Interim Director certifies that it, its affiliates, suppliers, and subcontractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date of this Agreement.

Discriminatory Vendor List: The Interim Executive Director hereby certifies that she has not been placed on Florida's Department of Management Services' Discriminatory Vendor List as provided under Section 287.134, Florida Statutes.

Title VI – Nondiscriminatory Policy Statement: During the performance of this Agreement, the Interim Executive Director agrees for itself and her successors in interest as follows:

a. **Compliance with Regulations.** The Interim Executive Director shall comply with the nondiscrimination regulations applicable to federally assisted programs of the U.S. Department of Transportation ("DOT") set forth at 49 CFR Part 21, as they may be amended from time to time (referred to hereinafter as the "Regulations"). Said Regulations are hereby incorporated into and made a part of this Agreement by reference. As required by 49 CFR 26.13, the Interim Executive Director is advised that the TPO shall not discriminate on the basis of race, color, national origin, religion, gender, age or disability in the award and performance of any DOT-assisted contract or in the administration of its DBE ("Disadvantage Business Enterprise") program or the requirements of 49 CFR Part 26. The TPO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

b. **Nondiscrimination.** The Interim Executive Director, with regard to the work performed during this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or familial status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Interim Executive Director shall not participate either directly or indirectly in the discrimination prohibited by the Regulations established at 49 CFR 21,

as they may be amended from time to time, including employment practices, if this Agreement covers a program set forth in Appendix B of the Regulations.

c. Information and Reports. The Interim Executive Director shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation ("FDOT"), Federal Highway Administration ("FHWA"), Federal Transit Administration ("FTA"), Federal Aviation Administration ("FAA"), and/or the Federal Motor Carrier Safety Administration ("FMCSA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Interim Executive Director is in the exclusive possession of another who fails or refuses to furnish this information, the Interim Director shall so certify to FDOT, FHWA, FTA, FAA, and/or FMCSA as appropriate, and shall set forth what efforts it has made to obtain the information.

d. Sanctions for Noncompliance. In the event of the Interim Executive Director's noncompliance with the nondiscrimination provisions of this Agreement, FDOT may impose such contract sanctions as it or FHWA, FTA, FAA, and/or FMCSA may determine to be appropriate, including, but not limited to: 1. Withholding of payments to the Interim Executive Director until the Interim Executive Director complies; and/or 2. Cancellation, termination or suspension of the Agreement, in whole or in part.

e. The Interim Executive Director does hereby represent and certify that she 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.

f. The Interim Executive Director 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.

g. The Interim Executive Director shall report all grievance or complaints pertaining to its actions and obligations under this Section to the TPO.

Conflict of Interest:

a. The Interim Executive Director represents that she 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 et seq., Florida Statutes. The Interim Executive Director further represents that no person having any such interest shall be employed to assist in the performance of this Agreement.

b. The Interim Executive Director shall promptly notify the TPO's Governing Board's Chair, in writing, by U.S. certified mail, return receipt requested or by hand delivery, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the Interim Executive Director'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 the Interim Executive Director may undertake and advise the TPO as to whether the association, interest, or circumstance would constitute a conflict of interest if entered into by the Interim Executive Director. The TPO Board Chair may notify the Interim Executive Director of its opinion as to whether a conflict exists under the circumstances identified by the Interim Executive Director. If, in the opinion of the TPO Governing Board Chair, the prospective business association, interest or circumstance would constitute a conflict of interest by the Interim Executive Director, then the Interim Executive Director shall immediately act to resolve or remedy the conflict. If the Interim Executive Director shall fail to do so, the TPA may terminate this Agreement for cause.

c. The Interim Executive Director shall not enter into any contract, subcontract, or arrangement personal to the Interim Executive Director in connection with its work with the TPO or any property included or planned to be included in the TPO work, with any officer, agent or employee of the TPO or any business entity of which the officer, agent, or employee or the officer's, agent's or employee's spouse or child is an officer, partner, agent, or proprietor or in which such officer, agent or employee or the officer's, agent's or employee's spouse or child, or any combination of them, has a material interest. "Material Interest" means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.

d. The Interim Executive Director shall not enter into any contract or arrangement personal to the Interim Executive Director in connection with the TPO's work, with any person or entity that was represented before the TPA by any person, who at any time during the immediately preceding two (2) years, was an officer, agent, or employee of the TPO.

e. The Interim Executive Director agrees for itself in the Interim Executive Director's personal capacity and shall insert in all contracts entered into in connection with the TPO work or any property included or planned to be included in the TPO work, and shall require its contractors to insert in each of their subcontracts, the following provision:

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

Contingent Fees:

The Interim Executive Director warrants that she has not employed or retained any company or person, other than a bona fide employee working solely for the Interim Executive Director in her personal capacity, 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 the Interim Executive Director, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Member of Congress: 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.

a. The Interim Executive Director agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the TPA, to any person for influencing or attempting to influence any 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, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid to the Interim Executive Director 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 Work, the Interim Director shall complete and submit Standard Form-1-LL "Disclosure Form to Report Lobbying," in accordance with its instructions or provide notification to the TPA in any other manner the TPA may allow.

c. The Interim Executive Director shall include the two (2) above-stated clauses modified to show the particular contractual relationship, in all subcontracts personal to the Interim Executive Director that it enters into related to the Work.

d. The Interim Executive Director may not expend any funds received under this Agreement for lobbying the Florida Legislature or any agency of the State.

Restrictions, Prohibitions, Controls, and Labor Provisions:

a. Federal Participation. It is understood and agreed that, in order to permit TPO participation in the expenditure of Federal PL Funds, this Agreement may be subject to the approval of FHWA or FDOT. It is understood and agreed that, in order to permit TPO participation in the expenditure of Federal PL Funds, 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 FHWA or as otherwise provided for in this section.

b. Inspection, Review, Approval, and Audit. It is understood and agreed that all rights of the FDOT or FHWA relating to inspection, review, approval, and audit of the work, tracings, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.

c. Record-keeping and documentation retention. The DOT and the TPO shall prepare and retain all records in accordance with the federal and state requirements, including but not limited to 2 CFR Part 200, 23 CFR Part 420, 49 CFR 18, 49 CFR 18.42, and Chapter 119, Florida Statutes, all as amended from time to time.

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

No Government Obligation to Third Parties:

a. The Interim Executive Director agrees, absent express written consent of the Federal Government, that the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to any third party contractor, or any sub-recipient, or any other party pertaining to any matter resulting from this Employment Agreement or purchase order related thereto. The Interim Executive Director agrees to include a similar provision in each subcontract (if any) which must be approved by the TPA and which is financed in whole or in part with federal assistance provided by FTA.

b. Program Fraud and False or Fraudulent Statements. The Interim Executive Director acknowledges that the provisions of the program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801, *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with this Agreement. Upon execution of this Agreement, the Interim Executive Director certifies and affirms the truthfulness and accuracy of any statement it has made, causes to be made, makes, or may make pertaining to the Agreement or the underlying FTA assisted project for which this Agreement is being performed. In addition to other penalties that may apply, the Interim Executive Director acknowledges that if she makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on it to the extent the Federal Government may deem appropriate. The Interim Executive Director also acknowledges that if the Interim Executive Director makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with federal assistance

authorized for 49 USC §5307, the Federal Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n) (1), to the extent the Federal Government deems appropriate. The Interim Executive Director agrees to include the above stated provisions in each subcontract financed in whole or in part with federal assistance provided by the FTA. The Interim Executive Director shall not modify the above stated provisions except to identify the subcontractor who will be subject to the provision.

c. Federal Changes. The Interim Executive Director shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, as they may be promulgated or amended from time to time during the term of this Agreement. The Interim Director's failure to so comply shall constitute a material breach of this Agreement. The Interim Executive Director agrees to include the above stated provision in each subcontract; provided, that this provision shall not be interpreted to authorize a subcontract.

d. Incorporation of FHWA and FTA Terms. This Agreement shall be deemed to include and does hereby incorporate by reference all standard terms and conditions required by the U.S. DOT, FHWA, and FTA, regardless of whether expressly set forth in this Agreement and include, but are not limited to, all of the duties, obligations, terms and conditions applicable to the work arising from this Agreement as described in FTA Circular 4220.1 F, and applicable federal law. Anything to the contrary herein notwithstanding, all FHWA and FTA mandated terms shall be deemed to control in the event of a conflict with any other provisions contained in this Agreement. The Interim Executive Director shall not perform any act, fail to perform any act, or refuse to comply with any requirement which would cause the TPO to be in violation of its Joint Planning Agreement with FDOT or any FHWA or FTA terms and conditions applicable to this Agreement. The Interim Executive Director agrees to include the above stated provision in each subcontract financed in whole or in part with FTA assisted funding; provided, that this provision shall not be construed to authorize any subcontract without TPO approval.

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.

Public Records:

a. It is hereby specifically agreed that all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business pursuant to or related to this Agreement of the Interim Executive Director, related, directly or indirectly, to this Agreement, hereunder, shall be deemed to be a "Public Record" whether in the possession or control of the TPO or the Interim Executive Director. Further, the Interim Executive Director agrees that pursuant to this Agreement, the Interim Executive Director is performing a service on behalf of the TPO. Consequently, said Public Record referenced above is subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the TPO's contract administrator.

b. The Interim Executive Director is required by this Agreement and Florida law to:

1. Keep and maintain Public Records required by the TPO to perform the service.
2. Upon request from the TPO's custodian of Public Records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed, except as authorized by law for the duration of the

Agreement term and following completion of the Agreement, if the Interim Executive Director does not transfer the records to the TPO.

4. Upon completion of the Agreement, transfer, at no cost, to the public agency all Public Records in possession of the Interim Executive Director or keep and maintain Public Records required by the TPO to perform the service. If the Interim Executive Director transfers all Public Records to the TPO upon completion of the Agreement, the Interim Executive Director shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Interim Executive Director keeps and maintains Public Records upon completion of the Agreement, the Interim Executive Director shall meet all applicable requirements for retaining Public Records. All records stored electronically must be provided to the TPO, upon request from the TPO's custodian of Public Records, in a format that is compatible with the information technology systems of the TPO.

c. Because certain of the Public Records may be exempt from disclosure or confidential under Florida or Federal law, the Public Records may not be released for viewing or copying by the Interim Executive Director in her personal capacity, if any, without the prior written approval of the TPO contract administrator. However, when a request is made by the public for a Public Record, the Interim Executive Director shall immediately contact the TPO contract administrator for direction on how to handle release of the Public Record for either viewing or copying.

d. Upon request by a citizen requesting records, the Interim Executive Director shall immediately supply copies of said non-exempt or non-confidential Public Records to the citizen requesting records or other individual authorized by the TPO. Upon request by the TPO, the Interim Executive Director shall immediately supply copies of any and all Public Records to the TPO. All books, cards, registers, receipts, documents and other papers in connection with this Agreement shall at any and all reasonable times during the normal working hours of the Interim Executive Director be open and freely exhibited to the TPO for the purpose of examination and/or audit.

e. Charges for furnishing Public Records to the public shall be as set forth in Chapter 119, Florida Statutes. There shall be no charges for furnishing copies of Public Records to the TPO.

f. The Interim Executive Director shall maintain all Public Records, including records of accounts between the TPO and the Interim Executive Director expenses or any items upon which a request for reimbursement shall be based pursuant to this Agreement in accordance with generally accepted accounting practices and available for inspection by the TPO or its authorized representative at all reasonable times.

g. The Interim Executive Director is advised as follows:

IF THE Interim Executive Director HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, AT (386) 226-0422, staff @R2CTPO.org [e-mail address], and Indigo Professional Center, 2570 West International Speedway Blvd., Suite 100, Daytona Beach, FL 32114-8145.

h. This Section shall survive the termination of this Agreement.

Unauthorized Alien Workers: The TPO will not intentionally award publicly funded contracts to any contractor, or to the Interim Executive Director, who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a (Section 274a of the Immigration and Nationality Act "INA".) of the Immigration Nationality Act ("INA"). The TPO shall consider a violation of the INA as grounds for unilateral cancellation of this Agreement by the TPO. As required by Section 448.095, Florida Statutes, the Interim Executive Director shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing the use of the system, to confirm the employment eligibility of: (i) all persons employed by the Interim Executive Director during the term of this Agreement to perform employment duties within Florida; and (ii) all persons, including subcontractors, assigned by the Interim Executive Director to perform work pursuant to this Agreement with the TPO.

Non-Exclusive Agreement: The parties acknowledge that this Agreement is not an exclusive agreement, and the TPO may employ other facilitators, engineers, planners, professional or technical personnel to furnish services for the TPO, as the TPO, in its sole discretion, finds is in the public interest. The TPO reserves the right to assign such work to the Interim Executive Director as it may approve in the sole discretion of the TPO.

REQUIRED FEDERAL DISCLAIMER: The Interim Executive Director agrees that it shall display the following disclaimer on all reports generated by the Interim Executive Director:

The preparation of this report has been financed in part through grant[s] 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, U.S. Code. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.

Right To Inventions Made Under This Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year. The Interim Executive Director agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401, *et seq.* The Interim Executive Director agrees to report each violation to the TPO and agrees that the TPO will, in turn, report each violation as required to assure notification to FTA and the appropriate U.S. Environmental Protection Agency regional office. The Interim Executive Director further agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Clean Water: If this Agreement is valued at \$100,000 or more, the Interim Executive Director agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Interim Executive Director agrees to report each violation to the TPO and agrees that the TPO will, in turn, report each violation as required to assure notification to the FTA and the appropriate U.S. Environmental Protection Agency regional office. The Interim Executive Director also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by Federal Transportation Agency.

Energy Conservation: The Interim Executive Director agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the U.S. Energy Policy and Conservation Act.

Seat Belts: The Interim Executive Director is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate Interim Executive Director-owned, rented or personally operated vehicles, to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging, and to address each in every sub-agreement it enters into related to this Agreement. Specifically, the Interim Executive Director is encouraged to comply with: (a) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note; (b) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and (c) U.S. DOT provisions pertaining to Distracted Driving as set forth in said orders. In addition, the Interim Executive Director, its employees, agents, and volunteers shall comply with the Florida Safety Belt Law, Section 316.614, Florida Statutes.

Reducing Text Messaging While Driving: Pursuant to Executive Order 13513, 74 Fed.Reg. 51225 (Oct. 6, 2009), the Interim Executive Director is encouraged to adopt and enforce policies that ban text messaging while driving. Further, neither the Interim Executive Director, nor its employees, agents, and volunteers, shall not violate the Florida Ban on Texting While Driving Law, Section 316.305, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of April, 2022.

RIVER TO SEA TRANSPORTATION
PLANNING ORGANIZATION, a legal entity
Formed by Interlocal Agreement pursuant
to Section 339.175, Florida Statutes

By: _____
Billie Wheeler, Chair

ATTEST:

_____, Agency Clerk

INTERIM EXECUTIVE DIRECTOR:

Colleen Nicoulin

