

**NOVEMBER 30, 2022 MEETING MINUTES**  
**OF THE**  
**RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION (TPO) BOARD**  
2570 W. International Speedway Boulevard, Suite 100  
Daytona Beach, FL 32114-8145

**TPO Board Members Physically Present:**

Commissioner Stacy Cantu  
Mayor Karen Chasez  
Mayor Chris Cloudman, 1<sup>st</sup> Vice Chairperson  
Commissioner Dana McCool  
Councilwoman Christine Power  
Commissioner James Sherman\*  
Commissioner Roy Johnson  
Commissioner Randy Hartman  
Vice Mayor Bill Lindlau\*  
Council Member Bill O'Connor  
Vice Mayor Gary Smith\*\*  
Vice Mayor Eric Sander  
Council Chair Jeff Brower  
Council Vice Chair Barbara Girtman, Chairperson  
Council Member Billie Wheeler  
Council Member Danny Robins  
Anna Taylor (non-voting)

**TPO Board Members Virtually Present:**

Commissioner David Sullivan  
Council Member Reed Foley  
Dr. Jason Aufdenberg (non-voting)

**TPO Board Members Absent**

Commissioner Jeffrey Schuitema\*  
Commissioner Tina-Marie Schultz\* (excused)  
Council Member Richard Bryan\* (excused)  
Commissioner Rick Basso\*  
Mayor David Alfin (excused)  
Mayor Bill Partington (excused)  
Mayor Samuel Bennett\*  
Council Member Heather Post  
Ruben Colón (non-voting)  
Kerry Karl (non-voting)  
Becky Mendez (non-voting)

\* Non-voting member in the Small City Alliance

\*\* Voting member for the Small City Alliance

**Others Physically Present:**

Colleen Nicoulin  
Stephan Harris  
Kellie Smith  
Steven Buck  
Claire Hartman  
Claudia Paskauskas  
Melissa Gross  
Steven Boster  
Jim Cameron  
Steven Danskine

**Representing:**

Daytona Beach  
DeBary  
DeLand  
Deltona  
Edgewater  
Flagler Beach  
Holly Hill  
New Smyrna Beach  
Oak Hill  
Orange City Alternate  
Ponce Inlet  
South Daytona  
Volusia County  
Volusia County District 1  
Volusia County, District 2  
Volusia County, District 3  
FDOT

**Representing:**

Flagler County Alternate  
Port Orange  
BPAC Chairperson

**Representing:**

Beverly Beach  
Bunnell  
Daytona Beach Shores  
Lake Helen  
Palm Coast  
Ormond Beach  
Pierson  
Volusia County, District 4  
Volusia County School Board  
CAC Chairperson  
TCC Chairperson

**Representing:**

TPO Staff  
TPO Staff  
FDOT  
FDOT  
Ghyabi Consulting  
Inwood Partners  
Inwood Partners  
Inwood Partners  
Jim Cameron & Associates  
South Daytona

**Others Physically Present:**

Ralf Heseler  
Jay Williams

**Representing:**

Votran  
Volusia County

**Others Virtually Present:**

Debbie Stewart, Recording Secretary  
Pam Blankenship  
Jeffrey Cicerello  
Kelly Farabee  
Ed Kestory  
Maryam Ghyabi

**Representing:**

TPO Staff  
TPO Staff  
FDOT  
FDOT  
FDOT  
Ghyabi Consulting

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

The meeting of the River to Sea Transportation Planning Organization (TPO) Board was called to order at 9:00 a.m. by TPO Chairperson Barbara Girtman. The roll was called and it was determined a quorum was physically present. Due to the COVID-19 virus, the meeting was held in a hybrid format with 14 voting and three non-voting members physically present; and with two voting and one non-voting member attending remotely.

**MOTION:** *A motion was made by Council Member Wheeler 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.*

Chairperson Girtman welcomed new TPO Board members Commissioner Dana McCool representing Deltona, Commissioner Randy Hartman representing New Smyrna Beach, and Council Member Bill O'Connor representing Orange City.

**II. Pledge of Allegiance**

The Pledge of Allegiance was given.

**III. Public Comment/Participation**

There were no public comments.

**IV. Consent Agenda**

- A. October 26, 2022 River to Sea TPO Board Meeting Minutes
- B. Treasurer's Report
- C. Executive Committee Report
- D. Legislative Issues Subcommittee Report
- E. TIP Subcommittee Report
- F. Bicycle and Pedestrian Advisory Committee (BPAC) Report
- G. Citizens Advisory Committee (CAC) Report
- H. Technical Coordinating Committee (TCC) Report
- I. River to Sea TPO Board (R2CTPO) Report
- J. Executive Director Timesheet Review Report
- K. Review and Approval of Expenditure for the Dunlawton Avenue/Swallowtail Drive EB Right Turn Lane Feasibility Study (Port Orange) (\$25,465.00)
- L. Review and Approval of Expenditure for the Dunlawton Avenue/Taylor Road Pedestrian Streetlighting Feasibility Study Lighting Justification Report (Port Orange) (\$8,170.00)
- M. Cancellation of the December Executive Committee and TPO Board Meetings

**MOTION:** *A motion was made by Council Member Wheeler to approve the Consent Agenda. The motion was seconded by Vice Mayor Lindlau and carried unanimously.*

Mayor Chasez noted for members participating virtually that the approval of the Consent Agenda includes the cancellation of the December TPO Board meeting.

V. **Action Items**

A. **Review and Approval of the River to Sea TPO Executive Director Employment Agreement**

(Handout)

Ms. Nicoulin stated the TPO's legal counsel provided a template for the employment contract; she noted that the TPO attorney represents a number of other TPOs as well as the MPO Advisory Council (MPOAC). The template was updated to reference the River to Sea TPO guidelines. There are a number of standard clauses that are required at the federal level; language has been tweaked to ensure those requirements are met.

Mayor Cloudman commented that the previous Executive Director contract had some ambiguous and unclear items; this contract is clear and concise and he feels much more comfortable with it.

Chairperson Girtman noted for members attending virtually that the Executive Director's salary is \$140,000 with a 60-day notice requirement if she chooses to leave the TPO. It is a three-year contract.

**MOTION:** *A motion was made by Mayor Cloudman to approve the River to Sea TPO Executive Director employment agreement. The motion was seconded by Council Member Wheeler and carried unanimously.*

B. **Review and Approval of Resolution 2022-22 Restating the Policy for the Annual Allocation of Surface Transportation Block Grant (STBG) Program Urban Attributable (SU) Funding and Other State and Federal Funds Identified in the 204 Long Range Transportation Plan (LRTP)**

Ms. Nicoulin explained there are three guiding resolutions for the annual Call for Projects; after the process ends each year, the policies are reviewed to see if anything needs to be tweaked or changed. The subcommittees, advisory committees and TPO Board had no recommended changes to the policy resolutions this year so staff is asking for a restatement of the policies that go with the application package.

Mayor Chasez asked since this is a restatement of the policy, if that means the last process went smoothly and had no anomalies.

Ms. Nicoulin replied that is correct.

**MOTION:** *A motion was made by Vice Mayor Sander to approve Resolution 2022-22 restating the policy for the annual allocation of Surface Transportation Block Grant (STBG) Program Urban Attributable (SU) funding and other state and federal funds identified in the 2045 Long Range Transportation Plan (LRTP). The motion was seconded by Council Member Wheeler and carried unanimously.*

C. **Review and Approval of Resolution 2022-23 Restating the Local Match Requirements Placed on Member Local Governments for Projects Prioritized for Funding by the TPO**

Ms. Nicoulin stated there are no recommended changes to this policy resolution; last year, the percentage the Executive Director is allowed to authorize for cost increases was increased which did occur once this last year.

**MOTION:** *A motion was made by Council Member Wheeler to approve Resolution 2022-23 restating the local match requirements placed on member local governments for projects prioritized for funding by the TPO. The motion was seconded by Councilwoman Power and carried unanimously.*

D. **Review and Approval of Resolution 2022-24 Restating the Policy for Establishing and Maintaining Transportation Priority Projects**

Ms. Nicoulin stated there are no changes to this policy resolution; it establishes the project categories and ranking for the priority list which consists of eight different lists of projects.

**MOTION:** *A motion was made by Vice Mayor Sander to approve Resolution 2022-24 restating the policy for establishing and maintaining transportation priority projects. The motion was seconded by Council Member Wheeler and carried unanimously.*

**E. Review and Approval of the Priority Project Applications for Traffic Operations/Safety and Local Initiatives Projects, Transportation Planning Studies, and Bicycle Pedestrian Projects**

Ms. Nicoulin stated this item pertains to the applications that member local governments submit to the TPO for funding. Only minor changes were made to the bicycle/pedestrian project applications; they were updated to the current year and asks for additional information for projects. She reviewed the changes to the traffic operations project implementation application. The feasibility study application was updated to be consistent with the project implementation application. There are no changes to the planning studies application other than updating the current year and replacement of the word “commentary” with a purpose and need statement. The annual Call for Projects will open Friday, December 2, 2022 and remain open through the end of February 2023. In January, a workshop will be held at the TCC meeting as they are the ones who submit the applications.

Mayor Chasez stated the majority of the changes are good. She referred to the project implementation application and the section referring to mixed-use projects; it references the definition of a mixed-use project as defined in Resolution 2023-##; since the TPO Board does not meet until the end of January and applications are submitted in February, she asked if there was any way to reference the prior definition of a mixed-use project.

Ms. Nicoulin replied that is a typographical error; the resolution referencing mixed-use projects and the definition is the one that was just approved. That will be corrected prior to opening the Call for Projects.

Chairperson Girtman commented that she is pleased with the changes. She would like board members to take the information back to their staff; they need to consider what their needs are and evaluate the path going forward. It is a good time to look forward at the needs for Volusia and Flagler Counties. She asked Ms. Nicoulin to contact city managers to help create better relationships as we are branding the TPO to be a resource for Volusia and Flagler Counties.

**MOTION:** *A motion was made by Vice Mayor Sander to approve the priority project applications for Traffic Operations/Safety and Local Initiatives projects, Transportation Planning studies and Bicycle/Pedestrian projects. The motion was seconded by Councilwoman Power and carried unanimously.*

**F. Review and Approval of 2023 River to Sea TPO Legislative Positions**

Ms. Nicoulin stated a presentation and discussion regarding the draft 2023 Legislative Positions was held last month. The subcommittee met afterward to consider the changes which have been incorporated into the positions. The positions follow the same format used in the past and include three categories; funding, safety and advancing technology. Regarding safety, the previous positions stated we “discourage the use of handheld devices while driving”; that statement was revised to state “improve transportation by discouraging distracted driving, designing for appropriate speeds” as it is not just handheld devices that cause distracted driving. A new bullet was added under funding to “develop a resilient network of transportation infrastructure”; resiliency was not addressed in the previous positions. She reviewed the changes to the safety category; since our planning area is the most dangerous area in the country for bicyclists and pedestrians according to the 2021 Dangerous by Design Report, we want to focus more on incorporating policies that support FDOT’s Vision Zero. In February the TPO will adopt the annual safety targets; in previous years we adopted targets that represent a minimum reduction; this time we will be looking to adopt FDOT’s target of Vision Zero. The distracted driving bullet point was expanded to include all forms of distracted driving, not just handheld devices. For advancing technology, the positions remain unchanged except for including resiliency of the transportation system. Regarding other legislation that the TPO supports, a bullet was added to fully



restore the budget authority for the Commission for the Transportation Disadvantaged (CTD) and the last bullet was added to index local option fuel taxes to keep pace with inflation.

Mayor Chasez commented there have been discussions in the past about whether the TPO should support alternative ways to fund transportation to cover the growing use of electric vehicles that do not contribute to the local option fuel tax; as the number of electric vehicles increases, there should be a move to spread the tax burden because electric vehicles put wear on the pavement. As a transportation organization, we need to revisit this to see what would be an appropriate funding mechanism for transportation if we reach a critical mass of electric vehicles that do not pay the fuel tax.

Ms. Nicoulin replied that the first bullet in the funding category indicates that we support analyzing potential new revenue sources needed to preserve the transportation system. That language was added last year to include that the TPO supports the analysis of additional revenue sources but it does not go into details.

Chairperson Girtman referred to the bullet supporting fully restoring the budget authority for the CTD and asked for a further explanation as this is something we want to advocate. The Legislature could have overlooked this or not understood the impact it has on the transportation disadvantaged. She wants board members to understand the importance in case they are in a position to advocate for it as the TPO cannot.

Mr. Harris explained that several years ago there was budget authority for the Transportation Disadvantaged (TD) Trust Fund; monies were put into the TD Trust Fund from the Multi-use Corridors of Regional Economic Significance (MCORES) legislation that was a program to fund new toll roads in the state. That legislation was repealed in 2021 and when it was repealed, \$10 million in funding came out of the TD Trust Fund. Of that \$10 million, \$4 million went towards TD services that includes the Trip and Equipment Grant Program; and \$6 million for innovative TD services to fund cross-county mobility options. Since then, there has been a deficit. Although there is funding in the TD Trust Fund, budget authority is the issue; with the repeal of the legislation, the CTD does not have the authority to use that \$10 million. We are asking the Legislature to fully restore the budget authority; it was partially restored in the last legislative session.

Mayor Cloudman asked Mr. Harris to summarize this information and send it to the board members for use when they have their one-on-one meetings with the delegates.

***MOTION: A motion was made by Council Member Wheeler to approve the 2023 River to Sea TPO Legislative Positions. The motion was seconded by Vice Mayor Sander and carried unanimously.***

## **VI. Presentations and Discussion Items**

### **A. Presentation and Discussion of a Proposed Amendment to the River to Sea TPO Bylaws**

Ms. Nicoulin stated the TPO's current bylaws do not address a process for filling officer vacancies; the current bylaws state that if the TPO Chairperson is unavailable, the 1<sup>st</sup> Vice Chairperson will fill in. The current situation is that we do not have a 2<sup>nd</sup> Vice Chair or an immediate past Chair; she explained that the current 1<sup>st</sup> Vice Chairperson is Mayor Cloudman, the 2<sup>nd</sup> Vice Chairperson was Commissioner Victor Ramos who lost his election, and the immediate past Chairperson is Council Member Billie Wheeler who did not run for re-election. The TPO's legal counsel suggested amending the bylaws to include a process to fill those vacancies. An amendment to the bylaws requires a presentation at one meeting and action at the next meeting; therefore, the TPO will only function one month with limited officers. She reviewed the proposed changes to the bylaws which include a new section that provides for filling a vacancy in the office of the Chairperson, 1<sup>st</sup> Vice Chair/Treasurer, or 2<sup>nd</sup> Vice Chair/Secretary; the vacancy may be filled by a majority vote of the members participating in an official meeting of the TPO Board and the person appointed will fill the remainder of the unexpired term of the vacant office. If a vacancy is filled by a current officer, then the TPO Board shall vote to fill the office vacated by the current officer. She noted that the make-up of the Executive Committee is the three officers, the immediate past Chairperson, and three members appointed by the Chairperson; in this case, if the officer positions are filled, the immediate past Chairperson position is still left vacant. Therefore, this section of the bylaws is also being amended so that the Chairperson can appoint a fourth Executive Committee

member if the immediate past Chairperson position is vacant to preserve a seven-member Executive Committee.

Councilwoman Power asked if the immediate past Chairperson position is vacant should the clause read "immediate past Chair/Board member".

Ms. Nicoulin replied the attorney advised that if we have that situation, the board would appoint a Chairperson pro tem to serve at that meeting. This is part of Robert's Rules but language can be added to that paragraph.

Councilwoman Power asked who would meet as the Executive Committee in January since the next TPO Board meeting is not until the end of the month.

Ms. Nicoulin replied that Mayor Partington and Mayor Alfin along with Mayor Cloudman would be the January Executive Committee members and two in attendance would make the quorum.

Mayor Cloudman added that appointments cannot be made until January.

## **B. Presentation and Discussion of Transportation Funding**

(Handout)

Ms. Nicoulin stated the TPO's funding has been discussed over the last year and additional funding opportunities are becoming available through the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL). She explained it is a reauthorization of the Federal Surface Transportation Act and it extended and increased formula funding for transportation and made more federal funds available through discretionary grants. The TPO submitted an application for the discretionary Safe Streets and Roads for All (SS4A) grant to develop a safety action plan for our planning area and anticipates hearing something on it in December or January. There is approximately \$500 billion being made available for new investments; for transportation, water, the environment, public lands, resiliency, broadband, power and energy. The formula funding increased by 35% over the FAST Act; Congress determines the formulas and the recipients. Regarding the discretionary grants, 21 new programs were added to the existing 13 which represents approximately \$185 billion in potential funding. She reviewed some of those grants provided on the handout. The Federal Highway Administration (FHWA) has a website specific to the BIL that is continuously updated as new information and funding becomes available. The TCC discussed how to identify which program and/or projects each municipality has in mind; if it is regional in nature, something the TPO could take the lead on, a planning study, or something the TPO could provide support for. The intent is to capture as much funding as we can and identify the opportunities we have for funding projects; it is about matching those projects with the funding sources as they become available. As we move into the next Call for Projects cycle and the development of the next priority list, we want to have a pipeline of projects that are ready to move forward as funding is made available.

Mayor Chasez referred to the handout and the competitive grant for nationally significant bridges and other bridges to assist local governments with the bundling of smaller bridge projects; DeBary has a bridge replacement with a culvert that would have to be bundled. She encouraged the cities and/or counties to contact DeBary if they have a need that would involve a small bridge, to see if they could bundle them. It is a small bridge project that would not stand on its own.

Chairperson Girtman noted this is why she wanted to have this discussion now and again in January with the new TPO Board members. There are ways for us to get projects done collaboratively. The TPO has done a good job with relationships and the open mindset that we are all in this together. We need to make use of these funding opportunities and do what is best for Volusia County. Senator Tom Leek of Volusia County will have the Appropriations Committee and Representative Renner will have the House; Volusia County is slated to make a difference over the next couple of years and we need to leverage as much as possible.

Councilwoman Power referred to the Rural Surface Transportation Grant Program and some of the other opportunities may change some members thinking about projects their city or county may have a need for but

would not typically contact the TPO for. It is important to go back to their staff and have them look at thi/s with fresh eyes.

### **C. Presentation and Discussion of I-95 Corridor Overview**

Ms. Kellie Smith, FDOT, gave a PowerPoint presentation on the I-95 Corridor Overview; I-95 is one of the oldest highways on the interstate highway system running from Miami north to the US/Canadian border. She explained the significance of the corridor to connectivity, the economy and the movement of goods, and its importance as an evacuation route. She reviewed some of FDOT's past projects along the I-95 corridor including widening the entire segment within District 5 from four to six lanes as well as the new interchanges and modifications to existing interchanges. Current projects in Volusia County include the US 1 and LPGA Boulevard interchanges and new interchanges at Pioneer Trail and Maytown Road; she provided details on each project. Public hearings for both the US 1 and LPGA Boulevard interchanges will occur in early 2023. She explained that the Maytown Road interchange is coordination with Volusia County through planned developer funding and the PD&E phase is scheduled for FY 2026. She reviewed the future plans including a strategic plan for all of I-95 within District 5 to address mobility, safety, resiliency, technology, and community engagement. She reviewed some of the technology components that are already being installed such as ramp metering for interchange improvements, connected vehicle deployment, detour routing, and event management. They have been installing a number of fish-eye cameras to look at traffic volumes and safety issues.

Members discussed the presentation and the interchange improvements; for the US 1 interchange, FDOT held an alternatives meeting and the next step is to take the preferred alternative to the public. They are working on the design phase and working with their partners on the funding; there are a lot of funding opportunities becoming available that they hope to take advantage of to move this project along. The Maytown Road interchange was also discussed; it is developer funded through Volusia County; the only phase funded in the Work Program is the PD&E phase. Truck parking was discussed; FDOT conducted a truck parking study along the I-4 corridor and identified a site near the old rest area near the US 92 exit in Volusia County; there will be an east and west side site.

### **D. Presentation and Discussion of an Amendment to the Connect 2045 Long Range Transportation Plan (LRTP)**

Ms. Nicoulin stated whenever the LRTP is amended, the amendment must be presented and opened for public review and comment for 30 days. This amendment is specific to the Pioneer Trail Interchange which is a project currently in Cost Feasible Plan within the LRTP. This project received federal stimulus funding for the current fiscal year; this amendment adjusts the timeframe of the project in the Cost Feasible Plan to match when the funds are available. The funding amount and timeframe will be adjusted. This is the start of the LRTP amendment process; it will be made available for public comment. Any comments received will be provided to the advisory committees and TPO Board in January; action will be taken then.

### **E. FDOT Report**

Ms. Taylor stated that earlier this month FDOT celebrated Roadside First Responders Week recognizing road rangers, police officers and firefighters who help to keep our roadways safe and traffic moving. She announced the Work Program public hearing will take place December 5-9, 2022 with an in-person meeting December 6, 2022 at the District 5 office in DeLand; a presentation will be provided to the TPO in January. The tentative Work Program is available for review online with an interactive map that can specify the county, city, and neighborhood streets. She provided an update on SR A1A storm restoration; FDOT responded immediately after the storm with the goal to restore mobility. At this time, approximately 38,000 cubic yards of sand has been moved there. They will be on site until complete. There are environmental issues and sensitivity to the roadway; the previous project did not hold up as anticipated so they are creating a strike team compiled of Flagler Beach, Flagler County, Volusia County, state and environmental officials for a resolution on how to permanently repair the roadway. She will be providing updates from the strike team over the next few months.

## **VII. Interim Executive Director's Report**

Ms. Nicoulin recognized outgoing TPO Board members and thanked them for their service; 2<sup>nd</sup> Vice Chair Deltona Commissioner Victor Ramos, former Chair and New Smyrna Beach Commissioner Jason McGuirk, immediate past

Chair Volusia County Council Member Billie Wheeler, Volusia County Council Member Heather Post, Orange City Council Member Jeff Allebach, Edgewater Councilwoman Christine Power, and Chairperson and Volusia County Council Vice Chair Barbara Girtman. She noted how long each served on the TPO Board and the subcommittees they served on. She announced the TPO's Annual Open House and Toy Drive will be Wednesday, December 7, 2022 from 4:00 pm to 6:00 pm; we will be collecting toys and gift cards for infants through teens for the Department of Children and Families (DCF). Light refreshments will be served.

**VIII. River to Sea TPO Board Member Comments**

Commissioner Johnson announced the second phase of Pictona in Holly Hill has opened. He noted that something will need to be done someday on LPGA Boulevard between US 1 and Nova Road as it is currently only a two-lane road and traffic is increasing in that area.

**IX. River to Sea TPO Chairperson Comments**

Chairperson Girtman stated it has been an honor to serve as TPO Board Chair; we have planted some good seeds and there has been a shift in the atmosphere in Volusia County regarding collaboration and relationships with our agency partners. The TPO will be in good hands with Mayor Cloudman taking over as Chair in January. She came to the TPO for results and she wants to continue to help move things forward as it will take everyone working collectively to make things happen.

**X. Information Items**

- Citizens Advisory Committee Attendance Record – 2022
- Technical Coordinating Committee Attendance Report – 2022
- Bicycle/Pedestrian Advisory Committee Attendance Record – 2022
- October/November TPO Outreach and Activities
- Upcoming River to Sea TPO Events
- Volusia and Flagler County Construction Reports
- 2023 River to Sea TPO Board and Committee Meeting Schedule
- Annual TPO Holiday Open House & Toy Drive Flyer

**XI. Adjournment**

There being no further business, the River to Sea TPO Board meeting adjourned at 10:29 a.m.

**RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION**



**CITY OF DELAND MAYOR CHRIS CLOUDMAN  
CHAIRPERSON, RIVER TO SEA TPO**

**CERTIFICATE:**

The undersigned, duly qualified and acting Recording Secretary of the River to Sea TPO Board certifies that the foregoing is a true and correct copy of the minutes of the November 30, 2022 regular meeting of the River to Sea Transportation Planning Organization (TPO) Board, approved and duly signed this 25<sup>th</sup> day of January 2023.



**DEBBIE STEWART, RECORDING SECRETARY  
RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION**

**\*\* A recording of the November 30, 2022 TPO Board meeting is available upon request.**

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **RIVER TO SEA TRANSPORTATION PLANNING ORGANIZATION**, a governmental agency created and operating pursuant to Section 339.175, Florida Statutes, with post office address at 2570 West International Speedway Boulevard, Suite 100, Daytona Beach, FL 32114, hereinafter called "TPO," as party of the first part, and **COLLEEN NICOULIN**, with post office address at 6220 Foxhaven Court, Port Orange, FL 32127, hereinafter called "EXECUTIVE DIRECTOR".

### WITNESSETH:

WHEREAS, the TPO wishes to continue the employment of the services of COLLEEN NICOULIN as Executive Director of the TPO, as provided by the TPO Policies and Procedures and Section 339.175(6)(g), Florida Statutes, whereby each Metropolitan Planning Organization ("MPO") shall have an executive or staff director who reports directly to the MPO governing board for all matters regarding the administration and operation of the MPO; and

WHEREAS, the TPO is the MPO for Volusia County and the urbanized area of Flagler County; and

WHEREAS, it is the desire of the governing body of the TPO, hereinafter called the "Governing Board", to provide certain benefits, establish certain conditions of employment, and to set working conditions and requirements of said EXECUTIVE DIRECTOR; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **SECTION 1. DUTIES.**

A. The TPO hereby employs the said COLLEEN NICOULIN as Executive Director of said TPO to perform the functions and duties specified by State and Federal law, TPO Policies and Procedures and pertinent policy directives, the duties as described in the Executive Director's job description, and to perform other legally permissible and proper duties and functions as the Governing Board or the Executive Committee shall from time to time assign. The EXECUTIVE DIRECTOR shall be employed to perform work pursuant to this Agreement, as a salaried/full-time employee routinely performing at least forty (40) hours of work, usually Monday through Friday, TPO holidays excluded. It is recognized that the EXECUTIVE DIRECTOR will devote time outside the normal office hours to the performance of her duties for the TPO, and the EXECUTIVE DIRECTOR will be allowed to establish an appropriate work schedule consistent with the professional nature of her employment.

B. The job description of the EXECUTIVE DIRECTOR may be revised from time to time at the discretion of the TPO as determined by its Governing Board. At the request



of the EXECUTIVE DIRECTOR, issues such as compensation may be re-opened for further negotiation by the TPO operating through its Governing Board and the EXECUTIVE DIRECTOR, if the job description is materially amended or amended to add additional job duties.

C. The Governing Board shall be the sole judge of the performance of the EXECUTIVE DIRECTOR; provided, that the Governing Board may from time to time delegate oversight of performance to the TPO Governing Board Chairperson or the TPO's Executive Committee.

D. The EXECUTIVE DIRECTOR shall be responsible for insuring performance of:

1. All of the duties of the Executive Director as set forth in the Executive Director's job description, as amended from time to time. A copy of the job description is attached hereto as **Exhibit "A"**, which exhibit is incorporated herein by this reference; and

2. Direct and supervise the preparation by the TPO staff of the Unified Planning Work Program, Transportation Improvement Plan, Long-Range Transportation Plan, and preparation any other contracts or documents, all as provided in Section 339.175, Florida Statutes, and 23 CFR Part 450, Subpart C, all as amended from time to time. The EXECUTIVE DIRECTOR is authorized to coordinate with and use the services of the TPO General Counsel or other transportation-related planning contractors to assist in this task.

## **SECTION 2. TERM OF EMPLOYMENT.**

The term of employment of the EXECUTIVE DIRECTOR under this Employment Agreement shall be for a period of approximately three (3) years commencing December 1, 2022, and terminating November 30, 2025.

B. The EXECUTIVE DIRECTOR agrees to remain in the exclusive employ of the TPO during the term of this Agreement, and neither to accept other employment nor to become employed by any other employer without the express consent of the GOVERNING BOARD until the foregoing termination date, unless the term of this Employment Agreement is earlier terminated as provided in Section 5 or Section 6. However, the EXECUTIVE DIRECTOR may teach educational classes at the secondary or post-secondary levels and accept remuneration from avocations of interest to the EXECUTIVE DIRECTOR. Notwithstanding the foregoing, the EXECUTIVE DIRECTOR acknowledges that her work for the TPO shall be her top priority in the event of work or time conflicts.

**SECTION 3. COMPENSATION.** The TPO agrees to compensate the EXECUTIVE DIRECTOR for her services rendered pursuant hereto with an initial gross base salary of \$140,000.00 per year for each year of this Employment Agreement; provided, however, that any Cost of Living Adjustments (herein: "COLA") approved by the Governing Board for all TPO employees shall also be applied to the Executive Director's base salary, which



upon approval shall become the new base salary of the Executive Director; or as provided for by Section 215.425(3), Florida Statutes, the EXECUTIVE DIRECTOR shall be eligible to receive one-time, lump-sum performance bonuses deemed appropriate by the Governing Board. Payment of the foregoing annual salary shall be made in substantially equal installments on a bi-weekly basis or in the same manner as paid to general employees of the TPO. If the EXECUTIVE DIRECTOR is ever terminated, terminates this Agreement, or is suspended without pay, further payments of wages are terminated or suspended, except as otherwise provided in this Agreement. The foregoing sentence shall survive the termination of this Agreement.

#### **SECTION 4. SUSPENSION.**

A. The Governing Board, or its designee the TPO Executive Committee, reserves the right to suspend the EXECUTIVE DIRECTOR with or without compensation under the conditions of the Personnel Policy of the TPO, as amended from time to time.

B. Notwithstanding the foregoing and in addition thereto, the EXECUTIVE DIRECTOR may be temporarily suspended with or without pay from her employment while the Governing Board, or its designee the TPO Executive Committee, investigates any facts or circumstances which might constitute a basis for a "for cause" termination, for malfeasance, for misfeasance, or for neglect of duty.

C. In the event of any suspension, the TPO shall give the EXECUTIVE DIRECTOR written notice thereof stating in reasonable detail the nature of such facts or circumstances it is investigating.

D. Although a suspension pursuant to sub-sections A. or B. shall take place immediately, the EXECUTIVE DIRECTOR may contest the suspension and has a right to a prompt hearing within a reasonable period of time before the Governing Board, the Executive Committee, or either bodies' designee.

#### **SECTION 5. TERMINATION.**

A. Termination for Convenience. The TPO, by a majority of the entire Governing Board membership (*i.e.*, 10 affirmative votes) at a properly noticed meeting, may terminate the employment of EXECUTIVE DIRECTOR without cause by directing written notice of termination to EXECUTIVE DIRECTOR by certified U.S. mail, return receipt requested and postage prepaid or by hand delivery to the EXECUTIVE DIRECTOR.

In the event of such termination while the EXECUTIVE DIRECTOR is ready, willing and able to perform the duties of TPO Executive Director, and although the TPO does not need cause for termination as provided in Subsection B. hereof, the TPO shall pay EXECUTIVE DIRECTOR a sum equal to 20 weeks of severance pay (*i.e.*, calculated based on the then current rate of pay divided by 52 weeks times 20 weeks) that the EXECUTIVE DIRECTOR would earn for employment pursuant to this Agreement. Consistent with Section 215.425, Florida Statutes (2022), as used in this Section 5., the

term "severance pay" means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

1. Earned and accrued annual, compensatory, or administrative leave;
2. Early retirement under provisions established in an actuarially funded pension plan subject to part VII of Chapter 112, Florida Statutes; or
3. Any subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is by policy available to all employees of the unit of government pursuant to the unit's health insurance plan. This subparagraph may not be construed to limit the ability of the TPO to reduce or eliminate such subsidies.

Payment of the severance pay shall be paid to the EXECUTIVE DIRECTOR after deductions for income tax, social security, and other applicable payments due, if any. This termination or severance pay shall be paid in lump sum within thirty (30) days from the notice of termination.

Upon termination and payment of the severance pay, the TPO shall be relieved of any further liability to the EXECUTIVE DIRECTOR for pay, charges, penalties, damages, compensation or otherwise. Pursuant to Section 215.425(4), Florida Statutes, the EXECUTIVE DIRECTOR may not receive severance pay when the EXECUTIVE DIRECTOR has been fired for misconduct as defined in Section 443.036(29), Florida Statutes, by the TPO.

B. Termination for Cause. In the event the TPO terminates the EXECUTIVE DIRECTOR for cause then the EXECUTIVE DIRECTOR will be given a written copy of the particulars and shall have the right to appear in public before the Governing Board and present evidence and argument concerning said allegations. After such hearing, if a majority of the entire Governing Board (*i.e.*, 10 affirmative votes) finds there is cause to terminate the EXECUTIVE DIRECTOR and terminates the EXECUTIVE DIRECTOR, then the EXECUTIVE DIRECTOR shall not be entitled to severance pay. Said hearing shall be held within sixty (60) days of the notice of termination.

For the purpose of this Section 5. B., the term "for cause" shall include any of the following:

- Malfeasance;
- Misfeasance;
- Neglect of duty;

Conviction for, or admission to having committed the crime of a misdemeanor or a felony. A plea of *nolo contendere* shall for the purposes of this Agreement be construed to be the admission to having committed the crime of a misdemeanor or a felony. A determination by a court of law withholding judgment for the purposes of this Agreement shall be construed to be the conviction of a misdemeanor or a felony;

Unprofessional, unethical, immoral, or fraudulent conduct, if said conduct has a material adverse effect on the TPO's business or reputation;

Engaging in sexual harassment as admitted to by the EXECUTIVE DIRECTOR or as determined by a governmental body or a judicial or administrative forum, after a hearing at which the EXECUTIVE DIRECTOR was given an opportunity to be heard in her defense;

A material failure or refusal by the EXECUTIVE DIRECTOR to comply with the TPO policies and procedures or directives of the TPO Governing Board or Executive Committee, which failure or refusal is not cured by the EXECUTIVE DIRECTOR within thirty (30) days after written notice to her from the TPO Governing Board, or Executive Committee, of such failure or refusal;

The EXECUTIVE DIRECTOR's sanctioning of conduct by any TPO employee under her authority that constitutes a material violation of the TPO Policies and Procedures or directives of the TPO Governing Board, or Executive Committee, that is not reprovved by the EXECUTIVE DIRECTOR in a manner within a reasonable period of time after notice to her by the TPO Governing Board or Executive Committee;

A material failure or refusal by the EXECUTIVE DIRECTOR to faithfully and diligently perform the usual and customary duties of her employment and to adhere to the provisions of this Agreement, which failure or refusal is not cured by the EXECUTIVE DIRECTOR within thirty (30) days after written notice to her from the TPO Governing Board, or Executive Committee, of such failure or refusal;

Misconduct as defined in Section 443.036(29), Florida Statutes, as amended from time to time. "Misconduct" is defined in Section 443.036(29), as irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed *in pari materia* with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.



(e) 1. A violation of an employer's rule, unless the claimant can demonstrate that:

a. She did not know, and could not reasonably know, of the rule's requirements;

b. The rule is not lawful or not reasonably related to the job environment and performance; or

c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

C. Permanent Disability. If the EXECUTIVE DIRECTOR is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of thirty (30) days beyond any accrued annual leave, the TPO shall have the option to terminate this Agreement. The EXECUTIVE DIRECTOR shall be compensated upon termination as provided in Section 5. A. above.

D. This section shall survive the termination of this Agreement.

**SECTION 6. TERMINATION BY EXECUTIVE DIRECTOR.** The EXECUTIVE DIRECTOR may terminate her employment with the TPO by directing *written* notice of termination to the Chairman of the Governing Board by personal, hand delivery or by certified U.S. mail, return receipt requested and postage prepaid. In the event of such termination, the EXECUTIVE DIRECTOR shall not be entitled to receive the severance pay provided for in Section 5. of this Agreement. The EXECUTIVE DIRECTOR agrees to give sixty (60) calendar days notice from the date of dispatch of the afore-mentioned notice prior to termination, unless the Governing Board waives all or part of said time period. If the EXECUTIVE DIRECTOR gives less than sixty (60) calendar days' notice of her intent to terminate her employment, the TPO shall be entitled to retain as liquidated damages any sums that would otherwise be due the EXECUTIVE DIRECTOR as termination compensation or severance pay under Section 10. of this Agreement. This section shall survive the termination of this Agreement.

## **SECTION 7. AUTOMOBILE AND EQUIPMENT**

A. The TPO shall provide the EXECUTIVE DIRECTOR with a laptop computer for business use. Upon termination of this Agreement, the laptop computer shall be returned to the TPO in the same condition as when the computer was issued, normal wear and tear accepted.

B. The EXECUTIVE DIRECTOR shall receive no automobile reimbursement, but the EXECUTIVE DIRECTOR is eligible to receive travel reimbursement for TPO-related business travel subject to applicable Federal, State of Florida, and TPO policy

requirements and provided that funds have been budgeted in the TPO's annual budget document.

**SECTION 8. INSURANCE COVERAGE.** The TPO shall make all life, health and short- and long-term disability insurance coverage which is generally available to the TPO staff available to the EXECUTIVE DIRECTOR upon the same terms and conditions; provided, that the EXECUTIVE DIRECTOR meets all health and insurance screening criteria routinely applied to similarly situated employees.

**SECTION 9. ANNUAL LEAVE.** The EXECUTIVE DIRECTOR shall have the same paid time off (PTO) benefits as are generally available to the TPO's other similarly situated employees as described in the River to Sea TPO Handbook of Employee Policies and Practices, Section 6.R, as amended from time to time by the TPO Governing Board. As of the commencement date of this Agreement, the EXECUTIVE DIRECTOR shall be credited with any available, uncompensated PTO that she has accumulated from her employment with the River to Sea TPO to date. The Governing Board recognizes that the EXECUTIVE DIRECTOR served the TPO for many years and is accepting an executive position. In recognition of this service, the EXECUTIVE DIRECTOR shall be compensated at an annual leave accrual rate equal to an employee with 13 years of service which is currently 9.85 hours per pay period (based on 26 pay periods per year).

Once the EXECUTIVE DIRECTOR surpasses 13 years of work with the TPO, on July 5, 2030, (based on hire date of July 5, 2017) annual leave shall be calculated using the formula set forth in Section 6.R of the River to Sea TPO Employee Policies and Practices, as amended or increased from time to time.

#### **SECTION 10. TERMINATION PAY.**

A. The EXECUTIVE DIRECTOR shall receive, upon termination or resignation, compensation at termination equal to all accrued and unused annual leave time to which the EXECUTIVE DIRECTOR is entitled under the terms of this Agreement, plus any accrued benefits that the EXECUTIVE DIRECTOR would be entitled to under the then existing TPO policies applicable to the TPO's employees.

B. The EXECUTIVE DIRECTOR shall upon termination of her employment at the end of the term of this Agreement (e.g. – November 30, 2025), shall not be entitled to receive any severance pay for termination for convenience of the TPO.

**SECTION 11. BUSINESS EXPENSES.** Subject to Federal and applicable Florida State grant restrictions and provided that funding has been provided in the TPO's annual budget, the TPO shall pay or reimburse the EXECUTIVE DIRECTOR for employment-related expenses including, but not limited to meals, parking, tolls, hotel, and similar types of expenses at transportation-related conferences and meetings, subject to any requirements of TPO pre- or post-expenditure approval, as amended from time to time.



**SECTION 12. PERFORMANCE EVALUATION.** The TPO Executive Committee shall evaluate the job performance of the EXECUTIVE DIRECTOR during the month of August, or as soon thereafter as may be convenient to the Executive Committee or its designee, on an annual basis. Evaluation of the EXECUTIVE DIRECTOR's job performance shall be based upon criteria related to the elements of the EXECUTIVE DIRECTOR's position, which criteria shall be established by the Executive Committee and furnished to the EXECUTIVE DIRECTOR prior to commencement of an evaluation period (*i.e.* – July 1<sup>st</sup> to June 30<sup>th</sup> of the following year). The Executive Committee will present the proposed merit increase, if any, to the TPO Governing Board for its approval or disapproval. A copy of the EXECUTIVE DIRECTOR's job performance evaluation shall be furnished to the EXECUTIVE DIRECTOR.

**SECTION 13. PROFESSIONAL DEVELOPMENT AND CERTIFICATION.**

A. Subject to Federal and applicable Florida State grant restrictions, the EXECUTIVE DIRECTOR shall attend and participate in national, state and local associational conferences; provided, that said conferences are budgeted in the TPO's annual budget document and attendance has been approved by the TPO Chairperson or Executive Committee. The TPO shall pay for the cost of registrations, executive coaching, course fees, books and materials, travel, expenses and subsistence related to training programs, workshops and conferences which serve to continue the professional and educational development of the EXECUTIVE DIRECTOR. Reimbursement for travel and expenses shall be subject to the policy and procedures set forth in the Travel Policy of the TPO.

B. The TPO shall pay for professional membership organizational fees, dues and certifications funded in the discretion of the Governing Board by the annual TPO budget for the EXECUTIVE DIRECTOR. The EXECUTIVE DIRECTOR may hold offices or accept responsibilities in professional organizations; ~~provided, that such responsibilities do not interfere with the EXECUTIVE DIRECTOR'S~~ performance of her required duties.

**SECTION 14. AVAILABILITY OF NEW BENEFITS.** In the event that a new fringe benefit is made available to other similarly situated TPO employees, at the request of the EXECUTIVE DIRECTOR, this Agreement may be re-opened for negotiation of a possible extension of that benefit to the EXECUTIVE DIRECTOR.

**SECTION 15. PENSION PLAN.** The TPO and the EXECUTIVE DIRECTOR agree that the EXECUTIVE DIRECTOR shall continue as a participant in the Florida Retirement System. The TPO shall designate the EXECUTIVE DIRECTOR as a member of the Senior Management Service Class, or its equivalent. The EXECUTIVE DIRECTOR may choose to participate in an alternative Retirement and Pension Plan at the discretion of the EXECUTIVE DIRECTOR *and* the TPO Governing Board.

**SECTION 16. INDEMNIFICATION.** To the extent permitted by Section 111.07, 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 of any ~~the EXECUTIVE DIRECTOR for an~~ act or omission arising out of and in the scope of her



employment or function, unless, the EXECUTIVE DIRECTOR 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 EXECUTIVE DIRECTOR for an act or omission under color of state law, custom, or usage, wherein it is alleged that the EXECUTIVE DIRECTOR has deprived another person of rights secured under the Federal or Florida Constitutions, Constitution or laws. Any attorney's fees paid from public funds for the EXECUTIVE DIRECTOR who is later found to be personally liable by virtue of acting outside the scope of her 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 EXECUTIVE DIRECTOR. This section shall survive the termination of this Agreement.

**SECTION 17. NOTICE.** Notices, invoices, communications, and payments, hereunder shall be deemed made if given in any of the following forms:

A. By certified U.S. Mail, return receipt requested, postage prepaid, or by recognized nation overnight courier (i.e., Federal Express, United Parcel Service, United States Postal Service, etc.) and addressed to the party to receive such notice, invoice, or communication, as set forth below; or

B. By hand delivery to the office of the party to whom such notice, invoice, or communication is being given.

All notices, invoices, or communications shall be addressed to a party at the address given below or such other address as may hereafter be designated by notice in writing.

If to the River to Sea TPO:                      Chairperson  
River to Sea Transportation Planning Organization  
2570 West International Speedway Boulevard  
Suite 100  
Daytona Beach, Florida 32114

If to the EXECUTIVE DIRECTOR:      Colleen Nicoulin  
6220 Foxhaven Court  
Port Orange, Florida 32127

C. A notice or communication, under this Agreement, from one party to another party shall be sufficiently given or delivered if dispatched to the party's individual address listed in Section 17. 41. B. by hand delivery, or by U.S. certified mail, postage prepaid, return receipt requested.

D. Notices; Addresses; Time. Either party may unilaterally change its addressee or address, by giving written notice thereof to the other party pursuant to this Section 17. 41., but the change is not effective until the change notice is actually received by the other party.

E. Notice given by certified mail, return receipt requested, properly addressed and with postage fully prepaid, is deemed given when deposited in the United States mails within the continental United States, if the notice is thereafter delivered in due course at the address to which properly sent. Notice given by overnight courier, service prepaid, properly addressed is deemed given when deposited with the courier within the continental United States, if the notice is thereafter delivered in due course at the address to which properly sent. Notice given by manual delivery is deemed given only when actually received by the recipient.

## **SECTION 18. GENERAL CONTRACTUAL PROVISIONS.**

A. The text of this document shall constitute the entire agreement between the parties. This Agreement shall become effective when signed by the last party to the Agreement.

B. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. Said invalid or unenforceable word, sentence, or term, shall be stricken from this Agreement, and this Agreement shall be read as if said invalid or unenforceable word, sentence, or term, does not exist.

C. This Agreement shall be construed in accordance with the laws of the State of Florida.

D. This Agreement shall not be read or construed more harshly against either party hereto, because both parties have participated in the wording and negotiation of the terms of this Agreement.

E. The parties agree that litigation with regard this Agreement or any part hereof is subject to the local government home venue provision and that the exclusive venue and jurisdiction Venue and the forum for any legal proceedings on this Agreement shall be in the Circuit Court, 7th Circuit, or the U.S. District Court, Middle Southern District of Florida.

F. The paragraph headings are for reference and convenience only and shall have no effect in any construction of this Agreement.

G. This Agreement supersedes all other agreements, either oral or written, between the parties regarding the subject matter hereof. All rights granted to the EXECUTIVE DIRECTOR under this Agreement are personal, and neither this Agreement nor any of the rights arising hereunder may be transferred or assigned by the EXECUTIVE DIRECTOR, voluntarily or 110 10 involuntarily, without the consent of the TPO. Notwithstanding the foregoing, the TPO may assign any or all of the duties, responsibilities, rights, or privileges in this Agreement, through legal constructs, including Interlocal Agreements to other agencies of its choosing, contingent on compliance with applicable federal and state laws.

**SECTION 19. PUBLIC ENTITY CRIMES.** In accordance with Sections 287.132 and 287.133, Florida Statutes, by entering into this Agreement or performing any work Work in



furtherance hereof, the EXECUTIVE DIRECTOR certifies that said EXECUTIVE DIRECTOR, the EXECUTIVE DIRECTOR's 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. The foregoing shall not authorize performance hereof by any affiliate, supplier, or subcontractor of the Executive Director.

**SECTION 20. DISCRIMINATORY VENDOR LIST.** The EXECUTIVE DIRECTOR hereby certifies that it has not been placed on Florida's Department of Management Services' Discriminatory Vendor List as provided under Section 287.134, Florida Statutes.

**SECTION 21. TITLE VI – NONDISCRIMINATION POLICY STATEMENT.** During the performance of this Agreement, the EXECUTIVE DIRECTOR agrees for the EXECUTIVE DIRECTOR, the EXECUTIVE DIRECTOR's assignees and successors in interest states and affirms as follows:

A. Compliance with Regulations. The 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 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. The recipient's Disadvantage Business Enterprise ("DBE") program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). To the extent required by the Florida Department of Transportation ("FDOT") to comply with 49 CFR §26.13, the EXECUTIVE DIRECTOR shall register and comply with reporting requirements for FODT's Bidder Opportunity List. See 49 CFR §26.13(a).

B. Nondiscrimination. The 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 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 A B of the aforesaid Regulations. See 49 CFR §26.13(b) and 49 CFR §26.29.

The EXECUTIVE DIRECTOR must also provide upon request reasonable accommodation for access to programs and services for those with disabilities. As required by FDOT, The TPO and the EXECUTIVE DIRECTOR do not discriminate on the basis of race, color, national origin, sex, age, religion, disability and family status. Those with questions or concerns about nondiscrimination, those requiring special assurance under the Americans with Disabilities Act (ADA), or those requiring language assistance (free of charge) should contact the TPO's Title VI/Nondiscrimination Coordinator or Public Information Officer. See §10.7, FDOT MPO Program Management Handbook; 49 CFR §27.15(b).

C. Solicitations for Subcontractors, including Procurements of Materials and Equipment. In all solicitations made by the EXECUTIVE DIRECTOR, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the EXECUTIVE DIRECTOR of the EXECUTIVE DIRECTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or familial status. 111-11

Subcontracting Required Statement. Under 49 CFR 26.13(b), each subcontractor agreement signed by the EXECUTIVE DIRECTOR must include the following assurance:

"The EXECUTIVE DIRECTOR, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The EXECUTIVE DIRECTOR shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the EXECUTIVE DIRECTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TPO deems appropriate which may include but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages, and/or
4. Disqualifying EXECUTIVE DIRECTOR from future contracts as non-responsible.

The EXECUTIVE DIRECTOR shall include the statements set forth above in each subcontract or sub-consultant contract it lets.

Race Neutral Achievement. In accordance with 49 CFR Part 26.21, and the FDOT DBE Program Plan, DBE participation on FHWA-assisted contracts must be achieved through race-neutral methods. The TPO is required to implement the FDOT DBE Program on any contracts with FHWA funds. FDOT operates a 100% race and gender-neutral DBE program. This means that FDOT's current overall goal of 10.65% may be achieved without the use of contract DBE goals.



1. The EXECUTIVE DIRECTOR and the TPO will not require use of DBEs by the EXECUTIVE DIRECTOR as a matter of contract, nor will it seek sanctions for failing to use DBEs.
2. The TPO will not use bidder DBE commitments to evaluate bidder proposals or to select the winning consultant.
3. The TPO will not employ local or regional preferences in the evaluation or award of the contract.
4. The TPO is precluded from using any business program besides the FDOT DBE program. County or municipal small, minority or women's programs will not be used in award, evaluation or delivery of the contract.

D. Information and Reports. The EXECUTIVE DIRECTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to ~~her~~ 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 EXECUTIVE DIRECTOR is in the exclusive possession of another who fails or refuses to furnish this information, the EXECUTIVE DIRECTOR shall so certify to FDOT, FHWA, FTA, FAA, and/or FMCSA as appropriate, and shall set forth what efforts ~~she~~ it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the 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 EXECUTIVE DIRECTOR until the Director complies; and/or 2. Cancellation, termination or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions. The Director shall include the provisions of paragraphs a. through e. of this Section in every subcontract, including procurements of materials and leases of equipment, the EXECUTIVE DIRECTOR personally enters into as opposed to as an official of the TPO, unless exempted by the Regulations, or directives issued pursuant thereto. This provision does not authorize a subcontract. The EXECUTIVE DIRECTOR shall take such action with respect to any subcontract or procurement as FDOT, FHWA, FTA, FAA, and/or FMCSA may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the EXECUTIVE DIRECTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the EXECUTIVE DIRECTOR may request FDOT to enter into such litigation to protect the interests of FDOT, and, in addition, the EXECUTIVE DIRECTOR may request the United States to enter into such litigation to protect the interests of the United States.

G. The EXECUTIVE DIRECTOR does hereby represent and certify that it will comply with all the requirements imposed by Title VI of the Civil Rights Acts of 1964 and



Title VII of the Civil Rights Act of 1968, as they have been and may be modified from time to time (42 U.S.C. 2000d, et seq. et seq. and 3601 et seq. et seq.), and all applicable implementing regulations of the U.S.DOT and its agencies.

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

I. The EXECUTIVE DIRECTOR shall report to the Executive Committee all grievance or complaints pertaining to the EXECUTIVE DIRECTOR's actions and obligations under this Section to the TPO.

J. The foregoing Section 21. shall not be construed to authorize performance hereof with regard to the EXECUTIVE DIRECTOR's work by any affiliate, supplier, or subcontractor of the EXECUTIVE DIRECTOR.

## **SECTION 22. CONFLICT OF INTEREST.**

A. The EXECUTIVE DIRECTOR represents that the EXECUTIVE DIRECTOR 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. et seq., Florida Statutes. The EXECUTIVE DIRECTOR further represents that no person having any such interest shall be employed to assist in the performance of this Agreement.

B. The EXECUTIVE DIRECTOR shall promptly notify the TPO 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 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 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 EXECUTIVE DIRECTOR. The TPO Board Chair may notify the EXECUTIVE DIRECTOR of its opinion as to whether a conflict exists under the circumstances identified by the EXECUTIVE DIRECTOR. If, in the opinion of the TPO Governing Board Chair or the TPO's Executive Committee; the prospective business association, interest or circumstance would constitute a conflict of interest by the EXECUTIVE DIRECTOR, then the EXECUTIVE DIRECTOR shall immediately act to resolve or remedy the conflict. If the EXECUTIVE DIRECTOR shall fail to do so, the TPO may terminate this Agreement for cause.

C. The EXECUTIVE DIRECTOR shall not enter into any contract, subcontract, or arrangement personal to the 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 one percent (1%) or more of the total assets or capital stock of any business entity.

D. The EXECUTIVE DIRECTOR shall not enter into any contract or arrangement personal to the EXECUTIVE DIRECTOR in connection with the TPO's work, with any person or entity that was represented before the TPO 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 EXECUTIVE DIRECTOR agrees for itself in the 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."

**SECTION 23. CONTINGENT FEES.** The EXECUTIVE DIRECTOR warrants that it has not employed or retained any company or person, 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 EXECUTIVE DIRECTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

**SECTION 24. MEMBERS 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 EXECUTIVE DIRECTOR agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the TPO, 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. See 49 CFR Part 20, Appendix A.

B. If any funds other than federal appropriated funds have been paid to the 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 EXECUTIVE DIRECTOR shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions or provide notification to the TPO in any other manner the TPO may allow. See 49 CFR Part 20, Appendix A.

C. The EXECUTIVE DIRECTOR shall include the two (2) above-stated clauses modified to show the particular contractual relationship, in all subcontracts personal to the EXECUTIVE DIRECTOR that it enters into related to the Work. See 49 CFR Part 20, Appendix A.

D. The foregoing certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. See 49 CFR Part 20, Appendix A.

E. If any funds have been paid to any person for influencing or attempting to influence an officer employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with this commitment, the undersigned EXECUTIVE DIRECTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. See 49 CFR Part 20, Appendix B.

## **SECTION 25. 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 Part 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.

## **SECTION 26. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

A. The 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 EXECUTIVE DIRECTOR agrees to include a similar provision in each subcontract (if any) which must be approved by the TPO and which is financed in whole or in part with federal assistance provided by FTA. The foregoing sentence does not authorize a subcontract.

B. Program Fraud and False or Fraudulent Statements. The 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 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 or any Work Order is being performed. In addition to other penalties that may apply, the EXECUTIVE DIRECTOR acknowledges that if he 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 EXECUTIVE DIRECTOR also acknowledges that if the 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 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 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 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 EXECUTIVE DIRECTOR's failure to so comply shall constitute a material breach of this Agreement. The 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 4220.1F, 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 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 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.

E. No Intended Third-Party Beneficiaries. The parties acknowledge that this Agreement is not intended to be a third-party beneficiary contract, either express or implied, and confers no rights on anyone other than the TPO and the EXECUTIVE DIRECTOR, but the Florida Department of Transportation and the U.S. Department of Transportation shall be a beneficiary hereunder.

## **SECTION 27. UNAUTHORIZED ALIEN WORKERS.**

A. The TPO will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a (Section 274a of the Immigration and Nationality Act "INA"). Upon a contractor's employment of unauthorized aliens, the TPO may immediately terminate this Agreement. The EXECUTIVE DIRECTOR hereby affirms and represents to the TPO, that the EXECUTIVE DIRECTOR is not unauthorized alien worker operating in violation of 8 U.S.C. Section 1324a (Section 274a of the Immigration and Nationality Act "INA").

B. Section 448.095, Florida Statutes, requires that the e-verify system be used by the EXECUTIVE DIRECTOR in relation to hiring any employees of the EXECUTIVE DIRECTOR. Accordingly, the EXECUTIVE DIRECTOR agrees that she will utilize the System, in accordance with the law and the regulations applicable to the System, to verify the employment eligibility of her personal employees, and that she will require any of her personal subcontractors to use the System in the performance of her work under this Agreement to verify the employment eligibility of its employees. The EXECUTIVE DIRECTOR shall provide evidence that she and her subcontractors have so verified the employment eligibility of all her personal employees on forms and in the manner required by the law.

C. The foregoing Section 27. shall not be construed to authorize performance



hereof by any affiliate, supplier, or subcontractor of the EXECUTIVE DIRECTOR.

**SECTION 28. CIVIL RIGHTS.** The following requirements apply to this Agreement:

A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102, section 202 of the Americans with Disabilities Act of 1990, as amended, 42 USC §12132, and Federal transit law at 49 USC §5332, as each may be amended from time to time, the EXECUTIVE DIRECTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the EXECUTIVE DIRECTOR agrees to comply with all applicable federal implementing regulations and any other implementing requirements FTA may issue. The TPO does not discriminate on the basis of race, color, national origin, sex, age, religion, disability and family status. Those with questions or concerns about nondiscrimination, those requiring special assistance under the Americans with Disabilities Act (ADA), or those requiring language assistance (free of charge) should contact the Title VI Coordinator at (386) 226-0422 or staff@r2ctpo.org.

B. Equal Employment Opportunity:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and Federal transit laws at 49 USC §5332, the EXECUTIVE DIRECTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, et seq. ~~et seq.~~ (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC §2000e note), and with any other applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The EXECUTIVE DIRECTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the EXECUTIVE DIRECTOR agrees to comply with any implementing requirements Federal Transit Administration may issue.

(2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623 and federal transit law at 49 USC §5332, the EXECUTIVE DIRECTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the EXECUTIVE DIRECTOR agrees to comply with any implementing requirements FTA may issue.



(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, the EXECUTIVE DIRECTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the EXECUTIVE DIRECTOR agrees to comply with any implementing requirements FTA may issue.

**SECTION 29. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.** If this Agreement has a value of \$25,000 or more, this procurement is a covered transaction for purposes of 49 CFR Part 29. As such, the EXECUTIVE DIRECTOR is required to verify that it nor its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, is excluded or disqualified as defined at 49 CFR 29.940 and 29.945 and does so hereby certify. The EXECUTIVE DIRECTOR agrees to comply with and does hereby assure and certify the compliance of each third-party contractor and sub-recipient at any tier, with 49 CFR 29, Subpart C, while its proposal, offer or bid is pending and throughout the period that any agreement arising out of such offer, proposal or bid is in effect. The EXECUTIVE DIRECTOR further agrees to include a provision requiring such compliance in its subcontracts or any lower tier covered transaction it enters into.

**SECTION 30. 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 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. ~~et seq.~~ The 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 EPA regional office. The 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.

**SECTION 31. CLEAN WATER.** If this Agreement is valued at \$100,000 or more, the 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. ~~et seq.~~ The 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 EPA regional office. The 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 FTA.

**SECTION 32. ENERGY CONSERVATION.** The 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 Energy Policy and Conservation Act.

**SECTION 33. SEAT BELTS.** The EXECUTIVE DIRECTOR will use and promote on-the-job seat belt use policies and programs for itself and other personnel that operate 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 EXECUTIVE DIRECTOR ~~is~~ will ~~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; (c) U.S. DOT provisions pertaining to Distracted Driving as set forth in said orders; and Section 316.614, Florida Statutes,; and Section 316.614, Florida Statutes, regarding seat belts, all as amended from time to time.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

RIVER TO SEA TRANSPORTATION  
PLANNING ORGANIZATION, a  
governmental agency created and  
operating pursuant to Section 339.175,  
Florida Statutes

\_\_\_\_\_  
Barbara Girtman, Chairperson

\_\_\_\_\_  
Witness:

EXECUTIVE DIRECTOR:

\_\_\_\_\_  
Colleen Nicoulin

\_\_\_\_\_  
Witness:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

Weiss Serota Helfman Cole &  
Bierman, P.L.

By: \_\_\_\_\_  
Paul R. Gougelman, Esq.  
TPO General Counsel

## EXHIBIT "A" to EMPLOYMENT AGREEMENT FOR 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: \_\_\_\_\_





## **New & expanded competitive grant programs in the Bipartisan Infrastructure Law (BIL):**

- **Safe Streets for All (\$6B, new)** – This program will provide funding directly to local and tribal governments to support their efforts to advance “vision zero” plans and other improvements to reduce crashes and fatalities, especially for cyclists and pedestrians.
- **Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grants (\$15B, expanded)** – RAISE grants support surface transportation projects of local and/or regional significance.
- **Infrastructure for Rebuilding America (INFRA) Grants (\$14B, expanded)** – INFRA grants will offer needed aid to freight infrastructure by providing funding to state and local government for projects of regional or national significance. The BIL also raises the cap on multimodal projects to 30% of program funds.
- **Federal Transit Administration (FTA) Low and No Emission Bus Programs (\$5.6B, expanded)** – BIL expands this competitive program which provides funding to state and local governmental authorities for the purchase or lease of zero-emission and low-emission transit buses as well as acquisition, construction, and leasing of required supporting facilities.
- **FTA Buses + Bus Facilities Competitive Program (\$2.0B, expanded)** – This program provides competitive funding to states and direct recipients to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities including technological changes or innovations to modify low or no emission vehicles or facilities.
- **Capital Investment Grants (CIG) Program (\$23B, expanded)** – The BIL guarantees \$8 billion, and authorizes \$15 billion more in future appropriations, to invest in new high-capacity transit projects communities choose to build.
- **Federal Aviation Administration (FAA) Terminal Program (\$5B, new)** – This discretionary grant program will provide funding for airport terminal development and other landside projects.
- **MEGA Projects (\$15B, new)** – This new National Infrastructure Project Assistance grant program will support multi-modal, multi-jurisdictional projects of national or regional significance.
- **Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation (PROTECT) Program (\$8.7B, new)** – PROTECT will provide \$7.3 billion in formula funding to states and \$1.4 billion in competitive grants to eligible entities to increase the resilience of our transportation system. This includes funding for evacuation routes, coastal resilience, making existing infrastructure more resilient, or efforts to move infrastructure to nearby locations not continuously impacted by extreme weather and natural disasters.
- **Port Infrastructure Development Program (\$2.25B, expanded)** – BIL will increase investment in America’s coastal ports and inland waterways, helping to improve the supply chain and enhancing the resilience of our shipping industry. BIL overall doubles the level of investment in port infrastructure and waterways, helping strengthen our supply chain and reduce pollution.
- **5307 Ferry Program (\$150M, existing)** – BIL retains the \$30 million per year passenger ferry program for ferries that serve urbanized areas.
- **Electric or Low Emitting Ferry Program (\$500M, new)** – This competitive grant program will support the transition of passenger ferries to low or zero emission technologies.
- **Rural Ferry Program (\$2B, new)** – This competitive grant program will ensure that basic essential ferry service continues to be provided to rural areas by providing funds to States to support this service.

- **Federal Highway Administration (FHWA) competitive grants for nationally significant bridges and other bridges (\$12.5B, new)** – This new competitive grant program will assist state, local, federal, and tribal entities in rehabilitating or replacing bridges, including culverts. Large projects and bundling of smaller bridge projects will be eligible for funding.
- **FTA All Station Accessibility Program (\$1.75B, new)** – This competitive grant program will provide funding to legacy transit and commuter rail authorities to upgrade existing stations to meet or exceed accessibility standards under the Americans with Disabilities Act.
- **Charging and fueling infrastructure discretionary grants (Up to \$2.5B, new)** – This discretionary grant program will provide up to \$2.5 billion in funding to provide convenient charging where people live, work, and shop.
- **Reconnecting Communities Pilot Program (\$1B, new)** – This new competitive program will provide dedicated funding to state, local, MPO, and tribal governments for planning, design, demolition, and reconstruction of street grids, parks, or other infrastructure.
- **FHWA Nationally Significant Federal Lands and Tribal Projects (\$1.5B, expanded)** – This discretionary program provides funding for the construction, reconstruction, and rehabilitation of nationally-significant projects within, adjacent to, or accessing Federal and tribal lands. BIL amends this program to allow smaller projects to qualify for funding and allows 100% federal share for tribal projects.
- **Strengthening Mobility and Revolutionizing Transportation (SMART) Grant Program (\$1B, new)** – The SMART Grant program will be a programmed competition that will deliver competitive grants to states, local governments, and tribes for projects that improve transportation safety and efficiency.
- **Rural Surface Transportation Grant Program (\$2B, new)** – This new competitive grant program will improve and expand surface transportation infrastructure in rural areas, increasing connectivity, improving safety and reliability of the movement of people and freight, and generate regional economic growth.

Additional Information can be found through the following link:

<https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>

This website serves as a one-stop shop for FHWA's implementation of the Bipartisan Infrastructure Law, including everything from fact sheets and funding notices to guidance, regulations, and presentations.