

FIRST AMENDED INTERLOCAL AGREEMENT FOR THE CREATION OF THE METRO TRANSPORTATION ENGINEERING & CONSTRUCTION COOPERATIVE

This First Amended and Restated Interlocal Agreement for the creation of the Metro Transportation Engineering & Construction Cooperative (the "Agreement") is made and entered into, by and between the Broward Metropolitan Planning Organization (the "BMPO") and the undersigned Florida Municipal Corporations, each a Florida municipality or local government unit of the State of Florida (the "Municipal Members") (collectively the BMPO and Municipal Members shall be referred to as the "Parties").

RECITALS:

WHEREAS, on August 20th, 2015, the Federal Highway Administration, Florida Division and the State of Florida Department of Transportation entered into the Stewardship and Oversight Agreement on Project Assumption and Program Oversight (the "Oversight Agreement"); and

WHEREAS, the Oversight Agreement specifically authorizes the Florida Department of Transportation ("FDOT") to permit certified local agencies to carry out its responsibilities for administering federally funded transportation projects ("Federal Aid Projects"); and

WHEREAS, FDOT may only delegate its responsibility for the administration of Federal Aid Projects to a unit of government that has been certified under the FDOT Local Agency Program (the "LAP"); and

WHEREAS, the rules and requirements for the certification of a local agency are enumerated in the Florida Department of Transportation Local Agency Program Manual (the "Manual"); and

WHEREAS, FDOT has an extensive work program of Federal Aid Projects that fall within the jurisdiction of municipalities across Broward County (the "County"); and

WHEREAS, the Municipal Members desire to leverage their respective resources by creating an entity that may be LAP certified to complete all Federal Aid Projects located within their respective jurisdictions; and

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

WHEREAS, Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of governmental units; and

WHEREAS, the Parties to this Agreement desire to establish the Metro Transportation Engineering & Construction Cooperative ("MTECC") for the purpose of administering both Federal Aid Projects and transportation projects completed without the use of federal funding ("Local Projects"); and

WHEREAS, the BMPO is duly organized and existing under Section 339.175, Florida Statutes. The BMPO has unique experience in multimodal transportation planning and the review, ranking

prioritization, programming, and coordination of municipal transportation projects, which can assist the Municipal Members in efficient and effective decision-making regarding future transportation investments and the use of federal and state and local transportation funding options; and

WHEREAS, Section 339.175, Florida Statutes specifies that the BMPO shall have such powers and privileges that are provided under Section 163.01 and does further authorize the BMPO to coordinate “development activities” in coordination with other local governments; and

WHEREAS, MTECC will administer these Federal Aid Projects in a manner that compliments the implementation of Local Projects; and

WHEREAS, the Parties desired to empower MTECC to accept funds for, and oversee the construction of the Federal Aid Projects as well as Local Projects; and

WHEREAS, the Parties entered into the Interlocal Agreement for the Creation of the Metro Transportation Engineering & Construction Cooperative which was recorded Instrument No. 118179439 with the Clerk of Court for Broward County, Florida in accordance with Chapter 162.01(11) Fla. Stat. on May 31, 2022 (the “Original Agreement”); and

WHEREAS, the parties desire to amend the Agreement to eliminate the prohibition on a member of the MTECC Board serving simultaneously on the BMPO as previously described in Section 8.f. of the Original Agreement.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

1. **Recitals.** Each and all of the forgoing recitals shall be incorporated herein and acknowledged to be true and correct to the best of the Parties’ knowledge. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Agreement.
2. **Definitions.** The following terms shall have the meanings prescribed herein.
 - a. **Agreement** means and refers to this instrument, as amended from time to time.
 - b. **BMPO** means and refers to the Broward Metropolitan Planning Organization.
 - c. **BMPO Consultants** means and refers to private contractors engaged by BMPO.
 - d. **BMPO Staff** means and refers to employees of the BMPO.
 - e. **County** means and refers to Broward County.
 - f. **FDOT** means and refers to the Florida Department of Transportation, an agency of the State of Florida created pursuant to Section 20.23, Florida Statutes.
 - g. **Federal Aid Project** means and refers to transportation related projects funded by FDOT through a Local Agency Program (“LAP”) Agreement.
 - h. **Fiscal Year** means and refers to the twelve month period commencing October 1st and concluding September 30th.
 - i. **Founding Members** means and refers to the City of Plantation, the City of Pompano Beach, and the City of Hollywood.

- j. **LAP Agreement** means and refers to a Florida Department of Transportation Local Agency Program Agreement for the planning, design, construction and/or completion of a Federal Aid Project.
- k. **Local Projects** means and refers to any transportation related project that does not utilize federal funding and/or is not undertaken pursuant to a LAP Agreement.
- l. **MTECC** means and refers to Metro Transportation Engineering & Construction Cooperative.
- m. **MTECC Consultants** means and refers to private contractors engaged by MTECC.
- n. **Project Administration Agreement** means and refers to a written agreement between MTECC and a Municipal Member setting forth the responsibilities of their respective rights and responsibilities for the administration of a Federal Aid Project or Local Project.

3. Purpose. The purpose of this Agreement is to consent to and authorize the creation of MTECC, in order to facilitate the planning, design and construction of transportation related projects throughout County.

4. Legal Status; Formation. MTECC shall be a separate legal entity, pursuant to Section 163.01(7), Florida Statutes. This Agreement shall be filed with the Clerk of Court for Broward County, Florida in accordance with Section 163.01(11), Florida Statutes. The date of filing shall be the Organization Date.

5. Membership. Local governmental entities located within the County may enter into and become a Party to this Agreement following the approval of a majority of the members of the Board (as defined in Section 8 below), execution of this Agreement, payment of the Initial Contribution (as set forth in Section 11 below), and adoption of a resolution approving this Agreement and expressing of support for the establishment of and membership in MTECC by the governing body of the joining governmental entity.

6. MTECC Jurisdiction. The jurisdiction of the MTECC shall be the geographic boundaries of Broward County. MTECC shall be permitted to engage in the activities authorized in this Agreement only within the geographic boundaries of its Municipal Members.

7. Powers of MTECC. The Parties agree that MTECC shall exercise any or all of the powers granted under Sections 163.01, Florida Statutes, as may be amended from time to time, to carry out its purpose as defined in Section 3 of this Agreement. These powers include, without limitation, the following:

- a. In its own name to make and enter into contracts;
- b. To employ agencies, employees, or consultants;
- c. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- d. To acquire, hold, or dispose of property;
- e. To incur debts, liabilities, or obligations which shall not constitute the debts, liabilities, or obligations of any of the Parties to this Agreement;
- f. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of MTECC, the conduct of the business of MTECC, and the maintenance of records and documents of MTECC;

- g. To maintain an office at such place or places as it may designate within the County;
- h. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes, necessary to complete the design, development and/or construction of transportation related projects, and to accept funding from federal, state, or local agencies;
- i. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

8. MTECC Governance.

- a. Governing Board of MTECC. MTECC shall be governed by a governing board (the "Board") consisting of three members ("Board Members").
- b. Initial Board Composition. The Parties agree that, upon the execution and recording of this Agreement, the initial membership of the Board shall be comprised of one eligible, voter-elected representative from each of the Founding Members (the "Initial Board Members") as selected by the respective governing bodies of the Founding Members:
 - ii. City of Pompano Beach
 - iii. The City of Plantation
 - iv. The City of Hollywood
- c. Term of Board Members. The term of office for the Initial Board Members shall be as follows:
 - i. Five Year Term: The City of Hollywood.
 - ii. Seven Year Term: City of Plantation, City of Pompano Beach.

The term of each Subsequent Board Member (defined below) shall be four (4) years ("Board Term").

- d. Subsequent Board Composition. Upon the conclusion of the term of office of the Initial Board Members and each subsequent term of office thereafter, eligible individuals shall be appointed to fill the Board seats ("Subsequent Board Members"). Subsequent Board Members shall be selected by the Municipal Members with the longest tenured memberships in MTECC, in descending order until each qualified Municipal Member has had an opportunity to appoint a Board Member (the "Member Rotation"). Municipal Members must be a party to this Agreement in good standing as defined in Section 11 for a minimum of three consecutive (3) years prior to appointing a Board Member. Once each eligible Municipal Member has had the opportunity to appoint a Board Member, appointments to the Board shall repeat in the same order as provided for in this Section. If a Municipal Member elects to forgo its ability to appoint a Board Member, the forgoing Municipal Member shall be deemed to have made an appointment for the purpose of determining the Member Rotation, and the next Municipal Member in the Member Rotation shall appoint a Board Member.

- e. Expansion of Board Membership. The Board may, by majority vote, expand the membership of the Board from three members to five members. Newly created Board seats shall be filled in accordance with Section 8.d.
- f. Board Member Eligibility. Board Members shall be members of the governing body of the appointing Municipal Member. In the event a Board Member ceases to be a member of the governing body of the appointing Municipal Member, or becomes otherwise ineligible to serve on the Board, the appointing Municipal Member shall appoint a replacement official who is a member of the governing body to fulfill the remaining term of the ineligible Board Member.
- g. Removal for Non-Attendance: If any Board Member fails to attend three consecutive meetings or six meetings in any twelve (12) month period, the Board shall notify the appointing Municipal Member and the Municipal Member shall appoint a new qualified individual to serve as Board Member for the remainder of the term.
- h. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board Members participating in a meeting. The Board may adopt administrative policies related to MTECC operations, as well as rules related to the procedure to be followed during meetings of the Board. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.

9. MTECC Administration.

- a. Executive Director. The Board shall designate a principal administrative officer of MTECC (the “Executive Director”). The Executive Director shall:
 - i. Have the authority to execute contracts, deeds and other documents on behalf of MTECC.
 - ii. Be responsible for the hiring, supervision and removal of MTECC employees and consultants except as specifically defined herein.
 - iii. Ensure compliance with all laws and the provisions of this Agreement.
 - iv. Prepare and submit to the Board an annual budget commencing on October 1st and concluding September 30th of each year.
 - v. Develop policies and procedures that meet the requirements of the applicable contract/funding partner.

10. Authorized Activities of MTECC.

- a. Federal Aid Project Administration.
 - i. LAP Certification. On behalf of the Municipal Members, MTECC may become LAP certified by FDOT and may oversee all aspects of the delivery of Federal Aid Projects within its jurisdiction including, but not limited to: planning, procurement, and construction administration for projects funded and delivered under the LAP. Upon

certification under the LAP, MTECC may contract for the project delivery of Federal Aid Projects on behalf of FDOT.

- ii. Liability of the Parties for Federal Aid Project Completion. The Parties to this Agreement shall not be liable for any cost or expenses associated with the completion of any Federal Aid Project unless expressly agreed to in a Project Administration Agreement. Contractors selected by the Board for the design and construction of Federal Aid Projects shall be required to carry insurance policies with minimum policy limits acceptable to the Board (the "Policies").

b. Local Project Administration.

- i. Provision of Services to Municipal Members. MTECC shall make available to Municipal Members those services necessary to implement the purposes of this Agreement, as defined in Section 3 (the "Services"). The Services shall be performed by BMPO Staff, BMPO Consultants, MTECC Consultants, and MTECC Staff.
- ii. Payment for Services. Municipal Members shall pay for the cost of the Services rendered by BMPO Staff, BMPO Consultants, MTECC Staff and MTECC Consultants (the "Service Fee"). The Service Fee for BMPO Staff and MTECC Staff time shall equal the actual cost of the employee incurred on behalf of MTECC, as documented by time sheets including, but not limited to, salary, benefits, retirement contributions and administrative overhead. Administrative overhead for BMPO staff and MTECC staff shall not exceed 50% of an employee's salary. The Service Fee for Services performed by BMPO Consultants and MTECC Consultants shall be equal to the then current contracted rates. A schedule of Service Fees shall be provided to Municipal Members. Administrative overhead for BMPO Consultants and MTECC Consultants shall not exceed 10% of actual consultant fees.
- iii. Selection of Services. Services shall be procured in accordance with applicable laws that apply to the source of funds that are supporting the services/project. The provision of Services under this Agreement shall be memorialized in a Project Administration Agreement and/or the issuance of task work orders, which shall outline the Services to be completed and the associated Service Fees ("Task Work Orders"). Task Work Orders shall become binding upon the Parties following execution by the Municipal Member and MTECC. All Services to be performed must comply with all applicable Federal, State and local laws, guidelines and procedures.

11. Financial Obligations.

- a. Financial Contribution of Founding Members. Founding Members shall provide the initial funding for the establishment of MTECC. Each Founding Member shall make a non-refundable contribution of One Hundred Thousand Dollars (\$100,000) to MTECC (the "Establishment Contribution"). Founding Members shall tender the Establishment Contribution to MTECC not more than fifteen (15) days of the recording of this Agreement.
- b. Financial Contribution of Municipal Members.

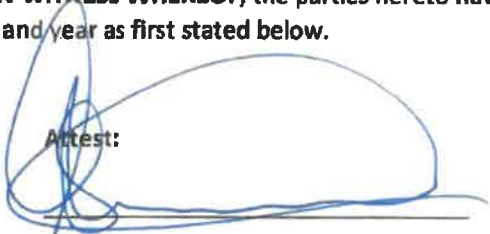
- i. **Initial Contribution.** Non-Founding Municipal Members shall pay a non-refundable initial membership fee in the amount of Fifty Thousand Dollars (\$50,000) (the "Membership Fee") not more than fifteen (15) days of executing this Agreement. A Municipal Member that withdraws from MTECC and subsequently rejoins MTECC shall pay a new Membership Fee upon reentry.
 - ii. **Annual Fee.** All Municipal Members shall pay a non-refundable annual fee for the continued participation in MTECC in an amount set by the Board (the "Annual Fee"). The Annual Fee for each Fiscal Year shall be Twenty-Five Thousand Dollars (\$25,000) unless otherwise established by the Board no later than March 1 prior to the commencement of the next Fiscal Year. The Municipal Members shall pay an Annual Membership Fee for a minimum of five years. Each Annual Fee shall be paid on October 1st of each year (the "Due Date"). Any Municipal Member that fails to remit the Annual Fee within thirty (30) days of the Due Date shall not be considered a member in good standing, shall be ineligible to appoint a Board Member during its next turn in the Member Rotation, and shall forfeit its claim to any funds to be disbursed upon the termination of MTECC. Further, Municipal Members shall not be permitted to avail themselves of Services for projects in the geographical boundaries of the Municipal Member until remittance of the Annual Fee.
 - c. **Limitation of Financial Obligations.** The financial obligations of the Municipal Members shall be limited to the payment of the applicable Establishment Contribution, Membership Fee, Annual Fee as well as any Services Fees authorized by the Municipal Member in accordance with Section 10 of this Agreement.
12. **Term; Termination.** This Agreement shall remain in full force and effect from the date of its recording until dissolved in accordance with this Section. Should a Party terminate its participation in this Agreement, be dissolved, abolished, or otherwise cease to exist, MTECC and this Agreement shall continue until such time as the Parties agree to terminate this Agreement. In the event of the dissolution of MTECC resulting from termination of this Agreement, any funds held by MTECC contributed by Municipal Members ("Municipal Agency Funds") shall be distributed to the Municipal Members that remain a party to this Agreement at the time of dissolution. Municipal Agency Funds shall be disbursed within thirty (30) days of the effective date of the dissolution in a proportionate share to the Establishment Contribution, Membership Fees or Annual Fees paid by such Municipal Members. Funds held by MTECC that have been contributed by FDOT or any other Federal or State agency shall be returned to the appropriate agency.
13. **Withdrawal.** A Party may terminate its involvement in MTECC and its participation in this Agreement upon one hundred eighty (180) days' written notice to the other Parties, provided that there is no LAP Agreement for the completion of a Federal Aid Project or uncompleted Task Work Order for a Local Project within its jurisdiction at the time of the written notice. No Party may terminate its participation in MTECC while a LAP Agreement for the completion of a Federal Aid Project or Task Work Order in its geographic boundaries remains effective. A Party who withdraws will not receive a refund of the Initial Contribution, Membership Fee or Annual Fees.
14. **Consent.** This Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of MTECC as required by Sections 163.01, Florida Statutes.

15. Liability / Sovereign Immunity. The Parties hereto shall each be individually and separately liable and responsible for the actions of their respective officers, agents and employees in the performance of their respective obligations under this Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Agreement any and all applicable insurance coverage required by Florida law for governmental entities. Nothing in this Agreement shall be construed to affect in any way the Parties' rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the Parties, nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement. The Parties are entities subject to Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their employees pursuant to Section 768.28, Florida Statutes.
16. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or by written certified U.S. mail, with return receipt requested, addressed to the Chief Executive and/or elected official for the Party for whom it is intended at the location of their City hall.
17. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by a majority of the Parties.
18. Filing. It is agreed that this Agreement shall be filed with the Clerk of the Circuit Court of Broward County, as required by Section 163.01(11), Florida Statutes.
19. Joint Effort. The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than another.
20. Quarterly Reports. A quarterly report of MTECC shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports, and other related records produced and maintained by MTECC, its employees, and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Agreement upon reasonable notice.
21. Merger. This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation

from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Agreement.

22. Assignment. The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.
23. Severability. If any clause, provision or section of this Agreement is found to be illegal or invalid by any court, the invalidity of such clause, provision or section will not affect the remainder validity of the remainder of the Agreement, and this Agreement will be construed and enforced.
24. Dispute Resolution. If the Parties are unable to resolve an issue about which there may be a disagreement regarding a matter covered in this Agreement or any subsequent Project Administration Agreement or Task Work Order, such dispute will be resolved in the following manner:
 - a. The Parties will meet through the respective municipal manager or administrator and the Executive Director, or their respective designee(s), in an effort to resolve the dispute; and
 - b. If the Parties are still unable to resolve the dispute, the Parties agree to further attempt to resolve the dispute in accordance with the governmental conflict procedures specified in Chapter 164, Florida Statutes, or such other process mutually agreed upon in writing by the Parties involved in the dispute.
25. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
26. Records. The Parties shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.
27. Governing Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Agreement shall be proper exclusively in Broward County, Florida.
28. Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.
29. Supremacy. This First Amended and Restated Agreement hereby supersedes and replaces the Original Agreement entered into between the Parties.
30. Effective Date. This Agreement shall become effective upon the execution by the Parties hereto and filing with the Clerk of Court for Broward County.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed the day and year as first stated below.

Attest: 

Witness Name: GREGORY STUART

B. L.

Witness Name: Bryan Calhoun

Broward Metropolitan Planning Organization

By:  9/8/22

Name: FRANK C. ORTIS

Title: Chair

Approved As To Form:

By: 

Name: Albert S. Gabriel

Title: General Counsel

Attest:

Joseph J. Kavanagh, City Clerk

Witness Name: _____

Witness Name: _____

City of Coconut Creek, Florida

By: _____

Name: Karen M. Brooks

Title: City Manager

___ day of _____, 20___

Approved As To Form:

By: _____

Name: Terrill C. Pyburn

Title: City Attorney