

DRAFT
INTERLOCAL AGREEMENT BETWEEN
POLK COUNTY, FLORIDA
AND POLK COUNTY TPO,
FOR LEGAL SERVICES BY THE COUNTY ATTORNEY'S OFFICE

THIS INTERLOCAL AGREEMENT (the "Agreement") is entered into as of the Effective Date (defined herein) by and between Polk County, a political subdivision of the State of Florida ("COUNTY"), and the Polk Transportation Planning Organization, ("TPO"), as follows:

RECITALS:

WHEREAS, Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act, authorizes the COUNTY and the TPO to enter into interlocal agreements to ensure the most efficient use of their respective powers and to exercise, jointly, any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the County Attorney is appointed by the County Commission and is responsible for providing legal advice and services to the COUNTY and other constitutional officers on as-needed bases; and

WHEREAS, through a separate agreement, the COUNTY provides the staff and location for the TPO; and

WHEREAS, the TPO is desirous to receive legal advice and services from the County Attorney's Office, and the COUNTY through the County Attorney's Office is able to provide legal advice and services, to the TPO;

WHEREAS, the TPO having separate general counsel creates duplication and increase costs for the public; and

WHEREAS, all parties recognize that such services benefit the citizenry at large.

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

SECTION 1: RECITALS

The above recitals are true and correct and by reference incorporated herein.

SECTION 2: COUNTY AUTHORIZATION FOR COUNTY ATTORNEY TO PROVIDE LEGAL ADVICE AND SERVICES TO THE TPO

- A. The COUNTY hereby authorizes the County Attorney and other attorneys within the County Attorney's Office to provide legal advice and services to the TPO.
- B. The COUNTY hereby acknowledges that a conflict of interest may occur that may prevent the County Attorney and other attorneys within the County Attorney's Office to represent the COUNTY in matters against or involving the TPO and in such matters outside counsel will have to be used by the COUNTY.

SECTION 3: TPO RESPONSIBILITIES

- A. If the TPO desires to engage the County Attorney, the TPO shall contact the County Attorney and request legal advice or services. If the County Attorney determines in the County Attorney's sole discretion that the matter cannot be handled by the attorneys in the County Attorney's Office, the County Attorney will inform the TPO. The TPO shall be solely responsible for the costs of seeking legal advice or services from outside counsel, except for tort matters processed and handled by the Polk County Risk Management Division.
- B. In legal matters involving tort claims, the TPO shall submit any notices or summons served on or received by the TPO to the County Attorney to forward to

the Polk County Risk Management Division to process and handle by staff or third party claim administrators and/or outside counsel and cooperate with the County Attorney's Office and Risk Management Division in the investigation, defense, and resolution of such claims.

C. The TPO hereby acknowledges that a conflict of interest may occur that may prevent the County Attorney and other attorneys within the County Attorney's Office to represent the TPO in matters against or involving the COUNTY and in such matters outside counsel will have to be used by the TPO.

D. Nothing herein shall prevent the TPO from acquiring outside counsel to handle matters on behalf of the TPO. TPO shall be solely responsible for the costs of legal advice and services not provided by the County Attorney's Office.

SECTION 4: NON-REPRESENTATION OF INDIVIDUALS AND WAIVER OF CONFLICT BY COUNTY AND TPO

The parties agree that legal services provided in this Agreement do not include advising or representing the TPO in their individual capacity, or the employees of the TPO'S Office in their individual capacities. The COUNTY and the TPO agree and acknowledge that although the interests of each party are generally consistent, it is recognized and understood that differences may exist or become evident during the course of the legal representation. Notwithstanding these possibilities, both parties have determined that it is in their individual and mutual best interests to have a single legal office represent them. Despite any potential or actual conflict of interest which may exist now or in the future, the COUNTY and the TPO consent to the County Attorney and the attorneys within the County Attorney's Office to simultaneously represent both the COUNTY and

the TPO. It is further understood and agreed that the County Attorney and the other attorneys within the County Attorney's Office may freely convey necessary information provided by one party to the other party. Each party hereto have agreed to waive any conflict of interest that may arise, including any conflict that may have arisen in the drafting of this Agreement. Nothing herein shall prohibit the TPO from employing separate legal counsel for specific needs when deemed necessary and appropriate by the TPO. The parties hereby agree that in the event of a dispute between the COUNTY and the TPO, or where provision of such services would be in violation of the Rules Regulating the Florida Bar, the Office of the County Attorney shall withdraw from representing the TPO.

SECTION 5: TERM OF THE AGREEMENT

This Agreement shall commence upon its execution by the COUNTY ("Effective Date") and shall remain in effect until terminated by either party as provided herein. This Agreement may be terminated by either party with or without cause upon ten (10) days written notice to the other party of this Agreement.

SECTION 6: NOTICES

The Parties shall direct all correspondence and notices to the attention of the public official identified below. That designated official shall be responsible for all material actions, oversight and coordination in the performance of this Agreement.

To COUNTY:

POLK COUNTY
C/o County Attorney
330 West Church St
Bartow, FL 33830

To TPO:

Polk County TPO
c/o TPO Executive Director
330 West Church St.
Bartow, FL 33830

Each party reserves the right to designate another official to be the point of contact without formal amendment to this Agreement by written, certified, return receipt U.S. Mail, facsimile transmission or e-mail notice to the other ten (10) days prior to the desired date of substitution thereof. If electronic, telex or facsimile notice is used; a record of confirmation of receipt of such transmission must be maintained.

All notices must be in writing and are effective only: (i) when deposited in the U.S. mail, certified mail, return receipt requested and postage prepaid, or (ii) when sent via overnight delivery. Notice will be deemed delivered on the date of receipt (or on the date receipt is refused) as shown on the certification of receipt or on the records or manifest of the U.S. Postal Service or overnight delivery service, as applicable.

SECTION 7: GENERAL PROVISIONS

- A. **Waiver:** Failure of the parties to enforce any right hereunder shall not be deemed a waiver of such right. No covenant, condition, or provision of this Agreement can be waived except with both parties written consent. Any such waiver by the parties in one instance shall not constitute a waiver of subsequent default, unless it specifically states in the written consent.
- B. **Modification:** This Agreement may not be modified in any way, unless such modification is in the form of a written amendment properly executed by all parties to this Agreement
- C. **Governing Law and Venue:** This Agreement shall be governed and interpreted under the laws of the State of Florida. Each of the parties hereto hereby irrevocably (i) agrees that any suit, action or other legal proceeding against any of them arising with respect to this Agreement shall be brought in the state courts

of Polk County, State of Florida, in the 10th Judicial Circuit; and (ii) waives any and all objections any of them might otherwise now or hereafter have to the laying of the venue of any such suit, action or proceeding in any of the courts referred to in this Section hereof or to service of any writ, summons or other legal process in accordance with applicable law.

D. **Employee Status:** Persons employed by the COUNTY or the TPO, in the performance of services and functions pursuant to this Agreement, shall have no claim on the other party to this Agreement for pension, worker's compensation, unemployment compensation, civil service, or any other employee rights or privileges granted by operation of law or otherwise to officers and employees of the other party to this Agreement.

E. **Sovereign Immunity:** Nothing herein shall be deemed a waiver, express or implied of either Party's sovereign immunity under Section 768.28, Florida Statutes or considered a waiver of immunity or the limits of liability beyond any statutorily limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other state statute. To the extent anything contained in this Agreement constitutes a waiver of sovereign immunity, such terms and conditions shall be interpreted to the fullest extent possible to effectuate the intent of the parties, but deleting any terms or conditions which would constitute a waiver of sovereign immunity.

F. **Severability:** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed lawfully invalid or unenforceable, the remainder of this Agreement, or

the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- G. **Integration:** Parties agree that this Agreement sets forth the entire agreement between the parties and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the parties pertaining to the subject matter of this Agreement, whether written or oral. Any prior agreements or contracts between the parties pertaining to the subject matter of this Agreement are hereby mutually terminated.
- H. **Joint Preparation:** The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- I. **Headings:** The captions and headings contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.
- J. **Independence of Parties:** This Agreement is not intended and shall not be construed in a way so as to deprive any party of the jurisdictional powers vested in said party nor is it the intention of the parties to combine their individual departments into a single department in order to provide the services

encompassed by this Agreement. In addition it is the intent of this Agreement that the parties shall at all times act as independent governmental entities.

**(AGREEMENT CONTINUED ON FOLLOWING PAGE WITH SIGNATURES AND
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ATTEST:
Stacy M. Butterfield, Clerk

POLK COUNTY, a political subdivision
of the State of Florida

BY: _____
Deputy Clerk

BY: _____
Martha Santiago, Ed. D, Chairman

Date _____

Reviewed as to form and legal sufficiency

County Attorney's Office

Polk County TPO

ATTEST:

Ryan Kordek, TPO Director

Mayor Sara Roberts McCarley, Chair

Date: _____