

## SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT ("Amendment") is entered into this 28<sup>th</sup> day of May, 2019, by and between COLLIER METROPOLITAN PLANNING ORGANIZATION (COLLIER MPO) transportation planning agency created pursuant to F.S. 339.175, whose mailing address is 2885 South Horseshoe Drive, Naples, Florida 34104, hereinafter referred to as "Lessee," and COLLIER COUNTY, a political subdivision of the State of Florida, whose mailing address is 3335 East Tamiami Trail, Suite 101, Naples, Florida 34112, hereinafter referred to as "Lessor," collectively stated as the "Parties."

### RECITALS:

WHEREAS, Lessee and Lessor entered into a Lease Agreement dated October 23, 2012, a copy of which is attached hereto; and

WHEREAS, the "Agreement Term," pursuant to Paragraph 6 of the Lease Agreement was October 23, 2012 through June 26, 2014, subject to renewals provided therein; and

WHEREAS, the Lease Agreement was automatically renewed pursuant to the provisions set forth in Paragraph 6; and

WHEREAS, on June 28, 2016, the Parties entered into a First Amendment to Lease Agreement further extending the termination date of the Lease Agreement through June 30, 2019, a copy of which is attached hereto; and

WHEREAS, the Parties wish to further amend the Lease by extending the termination date of the Lease Agreement for an additional three (3) year period through and including June 30, 2022, and by increasing the rental rate from \$20.00 per square foot to \$21.00 per square foot (for 663 square feet of office space), which amounts to annual rental amount of \$13,923.

### WITNESSETH:

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration exchanged amongst the parties, and in consideration of the covenants contained herein, the Parties agree as follows:


1. The termination date set forth in Paragraph 6 of the Lease Agreement is hereby extended to June 30, 2022.
2. Numbered Paragraph 7 of the Lease Agreement is amended, as follows:
  7. Rent. Lessee hereby covenants and agrees to pay as rent for the Premises the sum of ~~\$3,315.00~~ \$3,480.75 quarterly, which sum shall be due and payable on or before the following dates of each year of the lease: October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup> and July 1<sup>st</sup>.
3. The effective date of the new rental rate shall commence on July 1, 2019.

4. Except as expressly provided herein, the Lease Agreement remains in full force and effect according to the terms and conditions contained therein. If there is a conflict between the terms of this Second Amendment and the Lease Agreement dated October 23, 2012, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the Lessee and Lessor have hereto executed this Second Amendment to Lease Agreement the day and year first above written.

AS TO THE LESSEE:

COLLIER METROPOLITAN PLANNING ORGANIZATION, a regional transportation planning agency created pursuant to F.S. 339.175

  
\_\_\_\_\_  
Witness (signature)

Anne McLaughlin  
(print name)

  
\_\_\_\_\_  
Witness (signature)

Brandy Otero  
(print name)

By:   
\_\_\_\_\_

Councilman Reg Buxton, City of Naples,  
acting in his capacity as Chairman of  
the Collier MPO

ATTEST:  
Crystal K. Kinzel, Clerk of Courts  
And Comptroller

By: *Crystal K. Kinzel*  
Deputy Clerk  
Attest as to Chairman's  
signature only.

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By: *William L. McDaniel, Jr.*  
William L. McDaniel, Jr., Chairman

Approved as to form and legality:

*Scott R. Teach*  
Scott R. Teach  
Deputy County Attorney

*6/10*

## FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("Amendment") entered into this 28th day of June, 2016, by and between COLLIER METROPOLITAN PLANNING ORGANIZATION (COLLIER MPO) transportation planning agency created pursuant to F.S. 339.175, whose mailing address is 2885 South Horseshoe Drive, Naples, Florida 34104, hereinafter referred to as "Lessee," and Collier County, a political subdivision of the State of Florida, whose mailing address is 3335 East Tamiami Trail, Suite 101, Naples, Florida 34112, hereinafter referred to as "Lessor," collectively stated as the "Parties."

### RECITALS:

WHEREAS, Lessee and Lessor entered into a Lease Agreement dated October 23, 2012 a copy of which is attached hereto; and

WHEREAS, the "Agreement Term," pursuant to Paragraph 6 of the Lease Agreement was October 23, 2012 through June 26, 2014, subject to renewals provided therein; and

WHEREAS, since, June 26, 2014, the Lease Agreement was automatically renewed pursuant to the provisions set forth in Paragraph 6; and

WHEREAS, the parties wish to further extend the termination date of the Lease Agreement to June 30, 2019.

### WITNESSETH:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration exchanged amongst the parties, and in consideration of the covenants contained herein, the parties agree as follows:

1. The termination date set forth in Paragraph 6 of the Lease Agreement is hereby extended to June 30, 2019.
2. Except as expressly provided herein, the Lease Agreement remains in full force and effect according to the terms and conditions contained therein. If there is a conflict between the terms of this Amendment and the Lease Agreement dated October 23, 2012, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the Lessee and Lessor have hereto executed this First Amendment to Lease Agreement the day and year first above written.

AS TO THE LESSEE:

[Signature]  
Witness (signature)

Bandy Gere  
(print name)

[Signature]  
Witness (signature)

Anne McLaughlin  
(print name)

ATTEST:  
DWIGHT E. BROCK, Clerk

By: [Signature]  
Deputy Clerk  
Attest as to Chairman's  
signature only.

Approved as to form and legality:

[Signature]  
Scott R. Teach  
Deputy County Attorney

COLLIER METROPOLITAN PLANNING ORGANIZATION, a regional transportation planning agency created pursuant to F.S. 339.175

By: [Signature]  
Penny Taylor, Collier County Commissioner, acting in her capacity as Chairman of the Collier MPO

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By: [Signature]  
DONNA FIALA, CHAIRMAN



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LEASE AGREEMENT

This Lease Agreement (hereinafter referred to as "Lease") is entered into this 23<sup>rd</sup> day of October, 2012, by and between COLLIER METROPOLITAN PLANNING ORGANIZATION (COLLIER MPO), a transportation planning agency created pursuant to F.S. 339.175, whose mailing address is 2885 South Horseshoe Drive, Naples, Florida 34104, hereinafter referred to as "Lessee", and Collier County, a political subdivision of the State of Florida, whose mailing address is c/o Real Property Management, 3335 East Tamiami Trail, Suite 101, Naples, Florida 34112, hereinafter referred to as "Lessor," collectively stated as the "Parties."

RECITALS:

WHEREAS, Florida Statutes Section 125.38 provides that if a government agency, corporation or other organization which may be organized for the purposes of promoting community interest and welfare, should desire any real or personal property that may be owned by any county of this state or by its board of county commissioners, for public or community interest and welfare, then such government agency, corporation or organization may apply to the board of county commissioners for a conveyance or lease of such property, and that such board, if satisfied that such property is required for such use and is not needed for county purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such board may fix, regardless of the actual value of such property; and

WHEREAS, Lessee has applied to the Board of County Commissioners for a Lease of certain property which the Board has determined is not presently needed for County purposes; and

WHEREAS, it is the Board's finding that it is in the public interest to lease this property to Lessee on the terms and conditions set forth below.

WITNESSETH:

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration exchanged amongst the Parties, and in consideration of the covenants contained herein, the Parties hereby enter into this Lease on the following terms and conditions:

1. Conveyance. On the terms and conditions set forth in this Lease, and in consideration of Lessee's performance under this Lease, the Lessor conveys to the Lessee the present possessory interest in the Leased Premises described below.

2. Description of Leased Premises. The Leased Premises, which is the subject of this Lease, is a 663 square foot office within the building located at 2885 South Horseshoe Drive, Naples, Florida, and further described on Exhibit 'A,' which is attached hereto and made a part hereof this Lease, hereinafter referred to as the "Premises."

3. Conditions to Conveyance. Lessee warrants and represents to Lessor that it has examined the title and boundaries of the Premises. Accordingly, this conveyance is subject to all of the following:

- a. Any and all conditions, restrictions, encumbrances and limitations now recorded against the Premises;
- b. Any and all existing or future zoning laws or ordinances;
- c. Any questions of title and survey that may arise in the future; and
- d. Lessee's satisfactory performance of all terms and conditions of this Lease.

4. Use of Premises. The purpose of this Lease is for Lessee to transact MPO business, which use the Board of County Commissioners has found to be in the public's interest. Lessor shall have the right to terminate this Lease should Lessee utilize the Premises in any manner inconsistent with the approved use.

5. Permissible Alternations and Additions to Premises. Lessee may not make any alterations or additions to the Leased Premises without obtaining Lessor's prior written consent, which consent may be withheld in Lessor's sole discretion. Lessee shall submit to Lessor plans and specifications for all alterations and additions at the time Lessor's consent is sought.

6. Term of Lease. The term of this Lease shall commence on the date first above written, and unless terminated earlier by the Parties, shall terminate on June 26, 2014. If Lessee's Staff Services Contract ('Contract') is extended between the Collier Metropolitan Planning Organization and Collier County, upon review and concurrence by both the Department (FDOT) and Federal Highway Administration (FHWA), the Lease term shall automatically renew to reflect that Contract's service dates, as well as all subsequent renewal Contract dates between the Collier Metropolitan Planning Organization and Collier County, unless terminate earlier by either of the Parties.

7. Rent. Lessee hereby covenants and agrees to pay as rent for the Premises the sum of \$3,315.00 quarterly, which sum shall be due and payable on or before the following dates of each year of the lease: October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup> and July 1<sup>st</sup>.

8. Lessor shall be responsible for all costs, fees and charges concerning the Premises. Accordingly, Lessor shall promptly pay when due and prior to any delinquency all costs, fees, taxes, trash removal services, assessments, utility charges and obligations of any kind that relate to the Premises. Subject to the limitation set forth in Section 768.28, Fla. Stat., Lessee will indemnify and hold Lessor harmless from any and all claims, costs and obligations arising wholly or in part by the negligence of Lessee in connection with its use of the Premises in connection with any activity associated with this agreement. In case any action or proceeding is brought against Lessor by reason of Lessee's use of the Premises, Lessee shall pay all costs, attorneys' fees, expenses and liabilities resulting therefrom and shall defend such action or proceeding if Lessor shall so request, at Lessee's expense, by counsel reasonably satisfactory to Lessor. It is specifically agreed however, that Lessor may at its own cost and expense participate in the legal defense of such claim, with legal counsel of its choosing.

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9. Lessee's Liens and Mortgages. Lessee shall not in any way encumber the Premises, and shall promptly remove any and all liens placed against the Premises. All persons to whom these presents may come are put upon notice of the fact that the interest of the Lessor in the Premises shall not be subject to liens for improvements made by the Lessee and liens for improvements made by the Lessee are specifically prohibited from attaching to or becoming a lien on the interest of the Lessor in the Premises or any part of either. This notice is given pursuant to the provisions of and in compliance with Section 713.10, Florida Statutes.

10. Lessor's Obligation to Maintain. Lessor shall keep and maintain the Premises in good, sanitary and neat order, condition and repair, and shall abide with all lawful requirements. Such maintenance and repair shall include, but not be limited to, painting, janitorial, fixtures and appurtenances (lighting, heating, plumbing, and air conditioning).

11. Quiet Enjoyment. Lessee shall be entitled to quiet enjoyment so long as Lessee has not defaulted on any of the terms of this Lease. Accordingly, Lessee shall have the exclusive right to use the Premises during the term of this Lease. During the term of this Lease, Lessee may erect appropriate signage on the Leased Premises and the improvements constructed by Lessee thereon. Any such signage shall be in compliance with all applicable codes and ordinances.

12. Casualty. If the Premises are destroyed, rendered substantially inhabitable, or damaged to any material extent, as reasonably determined by Lessor, Lessor shall use its best efforts to find alternative, comparable office space for Lessee within a reasonable period of time.

13. Access to Premises. Lessor, its duly authorized agents, contractors, representatives and employees, shall have the right after reasonable oral notice to Lessee, to enter into and upon the Premises during normal business hours, or such other times with the consent of Lessee, to inspect the Premises, verify compliance with the terms of this Lease, or make any required repairs.

14. Termination and Surrender. Unless otherwise mutually agreed by the Parties, within thirty (30) days after termination of the lease term, Lessee shall redeliver possession of the Premises to Lessor in good condition and repair. Lessee shall have the right at any time during Lessee's occupancy of the Premises to remove any of its personal property and equipment.

15. Assignment. Lessee may not assign this Lease or sublet any portion of the building constructed on the Premises by Lessee without the express prior written consent of the Lessor, which consent may be withheld in Lessor's sole discretion. Any purported assignment or sublet without the express written consent of Lessor shall be considered void from its inception, and shall be grounds for the immediate termination of this Lease. Lessor may freely assign this Lease upon written notice to Lessee.

16. Defaults and Remedies.



a. Defaults by Lessee. The occurrence of any of the following events and the expiration of the applicable cure period set forth below without such event being cured or remedied will constitute a "Default by Lessee" to the greatest extent then allowed by law:

- i. Abandonment of Premises or discontinuation of Lessee's operation.
- ii. Failure of Lessee to perform or comply with any material covenant or condition made under this Lease, which failure is not cured within ninety (90) days from receipt of Lessor's written notice stating the non-compliance shall constitute a default (other than those covenants for which a different cure period is provided), whereby Lessor may, at its option, terminate this Lease by giving Lessee thirty (30) days written notice unless the default is fully cured within that thirty (30) day notice period (or such additional time as is agreed to in writing by Lessor as being reasonably required to correct such default). However, the occurrence of any of the events set forth above shall constitute a material breach and default by Lessee, and this Lease may be immediately terminated by Lessor except to the extent then prohibited by law.

b. Remedies of Lessor.

- i. In the event of the occurrence of any of the foregoing defaults, Lessor, in addition to any other rights and remedies it may have, shall have the immediate right to re-enter and remove all individuals, entities and/or property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee, all without service of notice or resort to legal process and without being deemed guilty of trespass, or being liable for any loss or damage which may be occasioned thereby. If Lessee does not cure the defaults in the time frames as set forth above, and Lessor has removed and stored property, Lessor shall not be required to store for more than thirty (30) days. After such time, such property shall be deemed abandoned and Lessor shall dispose of such property in any lawful manner it so chooses and shall not be liable to Lessee for such disposal.

c. Default by Lessor. Lessor shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Lessor shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct such default) after written notice to Lessor by Lessee properly and in meaningful detail specifying wherein, in Lessee's judgment or opinion, Lessor has failed to perform any such obligation(s).

d. Remedies of Lessee. In partial consideration for the nominal rent charged to Lessee, Lessee hereby waives any claim it may have to direct or indirect monetary damages it incurs as a result of Lessor's breach of this Lease, and also waives any claim

it might have to attorneys' fees and costs arising out of Lessor's breach of this Lease. Lessee's remedies for Lessor's default under this Lease shall be limited to the following:

- i. For injunctive relief as may appear necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of Lessor under this Lease.
- ii. Lessee may cure any default of Lessor and pay all sums or do all reasonably necessary work and incur all reasonable costs on behalf of and at the expense of Lessor. Lessor will pay Lessee on demand all reasonable costs incurred and any amounts so paid by Lessee on behalf of Lessor, with no interest.

e. No Remedy Exclusive. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and in addition to every other remedy given under this Lease or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any event of default will impair any such right or power nor be construed to be waived, but any such right and power maybe exercised from time to time and as often as may be deemed expedient.

f. Non-Waiver. Every provision hereof imposing an obligation upon Lessee is a material inducement and consideration for the execution of this Lease by Lessee and Lessor. No waiver by Lessee or Lessor of any breach of any provision of this Lease will be deemed for any purpose to be a waiver of any breach of any other provision hereof or of any continuing or subsequent breach of the same provision, irrespective of the length of time that the respective breach may have continued.

#### Miscellaneous Legal Matters

17. This Lease shall be construed by and controlled under the laws of the State of Florida. In the event of a dispute under this Lease, the Parties shall first use the County's then-current Alternative Dispute Resolution Procedure. Following the conclusion of this procedure, either party may file an action in the Circuit Court of Collier County to enforce the terms of this Lease, which Court the Parties agree to have the sole and exclusive jurisdiction.

18. This Lease contains the entire agreement of the Parties with respect to the matters covered by this Lease and no other agreement, statement or promise made any party, or to any employee, officer or agent of any party, which is not contained in this Lease shall be binding or valid. Time is of the essence in the doing, performance and observation of each and every term, covenant and condition of this Lease by the Parties.

19. In the event state or federal laws are enacted after the execution of this Lease, which are applicable to and preclude in whole or in part the Parties' compliance with the terms of this Lease, then in such event this Lease shall be modified or revoked as is necessary to comply with such laws, in a manner which best reflects the intent of this Lease.