

INTERLOCAL AGREEMENT
BETWEEN THE
BROWARD METROPOLITAN PLANNING ORGANIZATION
AND THE
CITY OF FORT LAUDERDALE
FOR
ADMINISTRATIVE SERVICES

THIS INTERLOCAL AGREEMENT (“Agreement”) dated this _____ day of _____, 2015, by and between the **BROWARD METROPOLITAN PLANNING ORGANIZATION**, (“BMPO”), and the **CITY OF FORT LAUDERDALE**, a municipal corporation organized under the laws of the State of Florida (“City”).

WITNESSETH:

WHEREAS, Section 339.175, Florida Statutes, provides for the designation of a minimum of one metropolitan planning organization for each urbanized area of the state and the creation and operation of such metropolitan planning organizations pursuant to an interlocal agreement entered into pursuant to Section 163.01, Florida Statutes; and

WHEREAS, the Governor of Florida has designated the BMPO as the metropolitan planning organization for the urbanized area within Broward County and the BMPO is duly created and operated pursuant to an interlocal agreement between the Florida Department of Transportation and the affected units of general purpose local governments within the urbanized area within Broward County; and

WHEREAS, Section 339.175(2), Florida Statutes, provides that the BMPO shall be considered a legally independent governmental entity distinct from the state or the governing bodies of the local governments represented on the governing board of the BMPO; and

WHEREAS, the BMPO is a legally independent government entity distinct from the City and is authorized pursuant to Sections 339.175(6)(g) and 163.01, Florida Statutes, and has the authority to contract with the City for the provision of certain services to accomplish its

transportation planning and programing duties and administrative functions all within the parameters as specified in this Agreement; and

WHEREAS, it is the purpose and intent of this Agreement, to permit the City and the BMPO to make the most efficient use of their respective powers, resources and capabilities by enabling them to cooperate on the basis of mutual advantage and provide a means by which the parties may exercise their respective powers, privileges and authorities that they share in common and that each might exercise separately; and

WHEREAS, the BMPO wishes to obtain certain administrative support services from the City to assist the BMPO in managing the continuing, cooperative, and comprehensive transportation planning process mandated by state and federal law and is authorized by Sections 339.175(6)(g) and 163.01, Florida Statutes, to contract with the City for same; and

WHEREAS, the City declares that entering into this Administrative Services Agreement serves a legitimate municipal purpose and has the authority to enter into this Agreement to provide the services hereinafter described; and

WHEREAS, on July _____, 2015, the City Commission authorized the Mayor and City Manager to execute this Agreement with the BMPO to perform these Administrative Services as hereinafter described; and

WHEREAS, on September _____, 2015, the BMPO Board authorized the appropriate BMPO officials to execute this Agreement with the City to perform these Administrative Services as hereinafter described; and

WHEREAS, the BMPO and the City desire to enter into this Agreement to define the administrative support services to be provided to the BMPO by the City and the duties and obligations of each party to the other are set forth therein.

NOW, THEREFORE, in consideration of the promises and mutual covenants and undertakings set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the BMPO and City agree as follows:

SECTION 1

DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the work or phrase is used requires a different definition:

- 1.1 “BMPO Administrative Functions” – means any administrative services except capital.
- 1.2 “Agreement” -- means this document, Sections 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.3 “BMPO” -- The Broward Metropolitan Planning Organization is the federally designated transportation policy making board for Broward County, Florida.
- 1.4 “BMPO Board” – The Broward Metropolitan Planning Organization governing Board.
- 1.5 “City” -- The City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida.
- 1.6 “Cost Center” – A City established transportation agency fund account to provide the BMPO with advance funding, which will be fully reimbursed by the BMPO through Federal, State or local grants as such funding shall be received from time to time
- 1.7 “Recitals” -- The Whereas recitals set forth above are true and correct and are incorporated herein.

SECTION 2

PURPOSE AND SCOPE

- 2.1 The purpose of this Agreement is to set out the terms and conditions applicable to the City’s acceptance of providing BMPO Administrative Services
- 2.2 The City shall provide Administrative Services (the “Services”) to the BMPO and the BMPO staff to assist in managing the continuing, cooperative and comprehensive transportation planning process for the urbanized area with Broward County. The BMPO shall reimburse the City for the Services rendered.

SECTION 3

CITY RESPONSIBILITY

- 3.1 The City agrees to create a Cost Center and to assign funding necessary, in an amount of no greater than \$3,000,000, (the “Funding Amount”) for the BMPO to access from time to

time to operate its accounts payable, accounts receivable and payroll functions consistent with approved BMPOs Unified Planning Work Program (Two Year Budget).

3.2 The City shall include the BMPO Cost Center in the City's budget. The City shall include the BMPO Cost Center in the annual audit performed by independent auditors; however, the BMPO will bear any additional costs. The BMPO may independently audit, at its own additional expense, the BMPO Cost Center. The Parties agree to provide to each other and any other third party all information necessary to complete said audit(s) of the Cost Center. The Parties agree that audit report(s) shall be furnished to each other and other agencies as required by the Federal and State single audit guidelines.

SECTION 4

BMPO RESPONSIBILITY

4.1 The BMPO shall prepare and submit to the City the BMPO's Unified Planning Work Program as mandated by Federal and State law by June 1st of each year.

4.2 The City will provide BMPO with a quarterly report of drawn downs and repayments. Upon receipt of report, BMPO should submit funds to pay the outstanding balance within 30 days.

4.3 The BMPO agrees to operate an accounting system

4.4 The BMPO agrees to reimburse the Cost Center provided by the City as per section 4.2.

4.5 The BMPO agrees notwithstanding the foregoing, that the BMPO, as a distinct legal entity, shall bear the ultimate responsibility and liability to ensure that all required financial reporting, including, but not limited to, the filing of applicable tax returns, has been completed in a timely manner.

4.6 The BMPO agrees that the City is not responsible for any BMPO liability and is only responsible for providing the BMPO the Cost Center and to deposit the requested funding into the Cost Center as may be necessary for operating BMPO Administrative Functions.

SECTION 5

COMPENSATION

5.1 In consideration for the Services provided by the City, the BMPO shall reimburse the City for all costs incurred by the City for the Services described in Section 3 above, including indirect costs.

5.2 The BMPO agrees to compensate the City for the Services in the amount of \$3,500.00 a month, to be paid quarterly (January, March, June, and September of each calendar year). The Parties agree that the BMPO will commence paying the \$3,500.00 monthly fee, as specified in this Section 5, to the City when requested funds become available for access by the BMPO. The first initial payment amount will be prorated as may be appropriate. The City acknowledges and accepts the agreed compensation to be reasonable reimbursement to the City for the Services described in Section 3 above.

5.3 The BMPO agrees to make payment to the City each quarter in arrears for the Services rendered to the BMPO as defined in Section 5.2.

5.4 Payments from the BMPO shall be made to the City at the address provided in the notice section contained herein.

SECTION 6

TERM AND TERMINATION

6.1 This Agreement shall commence upon the Effective Date (as defined below) and shall continue in full force for a period of five (5) years, subject to annual appropriation of funds. This Agreement may be renewed upon motion of the City Commission and subject to annual appropriation of funds by City Commission for successive five (5) year terms, unless otherwise canceled by either the City or the BMPO as provided below.

6.2 Either party may terminate this Agreement for convenience at any time with one hundred eighty (180) days prior notice to the other party.

6.3 In the event of a default by either party, the non-defaulting party shall notify the other party, in writing of the default and of the time to cure the default ("Notice to Cure"). If such default is not cured, or sufficient effort is not made by the defaulting party, as determined solely by the non-defaulting party, to cure said default within thirty (30) business days after the date of the Notice to Cure, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice to the other party.

6.4 Upon termination of this Agreement, each party shall turn over to the other party within a reasonable period of time (not to exceed 90 days) all records held by it with respect to this Agreement.

SECTION 7

EFFECTIVE DATE

The Agreement shall be effective when funding is available, as referenced in 5.2, and the City Clerk shall file a fully executed copy of this Agreement with the Clerk of the Circuit Court of Broward County, Florida, pursuant to Chapter 163, Part 1, Florida Statutes.

SECTION 8

INDEMNIFICATION

GOVERNMENTAL IMMUNITY

8.1 Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The BMPO and the City are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of their agents or employees to the extent permitted by law.

8.2 To the fullest extent permitted by law, the City and BMPO agree to indemnify and hold the other's officials, employees and agents harmless from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the other, and other persons employed or utilized by that party in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

SECTION 9

BOOKS AND RECORDS

9.1 Each party shall retain all records related to this Agreement and any Services funded hereunder for in accordance with the State of Florida public records retention law. Each party

shall have access to such records, for the purposes of inspection and audit, until such time as the law allows said records to be destroyed.

9.2 Section 9.1 shall survive the expiration or termination of this Agreement.

SECTION 10

GENERAL PROVISIONS

10.1 *Assignment.* Neither this Agreement nor any right or interest created herein shall be assigned, transferred, or encumbered without the prior written consent of the other party.

10.2 *Notices.* Any notices required by this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, or alternatively, may be sent by U.S. certified mail, return receipt requested. Notices shall be provided to the following:

As to the City:

City of Fort Lauderdale
Attention: City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City of Fort Lauderdale Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, FL 33301

As to the BMPO:

Broward Metropolitan Planning Organization
Attention: Executive Director
Trade Centre South
100 West Cypress Creek Road, Suite 850
Fort Lauderdale, FL 33390-2112

With a copy to:

Alan L. Gabriel, Esq.
BMPO General Counsel
Weiss Serota Helfman Cole & Bierman, P.L.
200 E. Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

10.3 *Litigation; Venue; Limitation of Actions; Waiver of Jury.*

10.3.1 This Agreement shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law. The parties submit to the jurisdiction of Florida courts. The parties agree that proper venue for any suit concerning this Agreement shall be Broward County, Florida. In any litigation arising under this Agreement, each party shall bear its own costs and attorney fees. To ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

10.3.2 In the event of a breach of this Agreement or if enforcement of this Agreement shall be required, the BMPO and City agree to reasonably cooperate with each other and take all appropriate and necessary action to secure payment of all applicable compensation or reimbursement of funds, and that no party (the BMPO or City) shall be liable to the other for damages; however, a party may be subject to equitable remedies such as mandamus or specific performance.

10.4 *Waiver.* It is hereby agreed to by the parties that no waiver of breach or any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any covenant.

10.5 *Entire Agreement.* This Agreement expresses the entire agreement of the parties, and no party shall be bound by any promises or representations, verbal or written, made prior to the date hereof which are not incorporated herein. Any subsequently general planning contract and/or work authorization accepted by the BMPO and the City shall be subject to the general terms and conditions of this Agreement.

10.6 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but together such counterparts shall constitute only one instrument.

10.7 *Failure to Perform.* Should any party involuntarily fail to perform any of their respective obligations pursuant to this Agreement, this Agreement may be terminated.

10.8 *Severability.* If any section, sentence, clause or phrase of this Agreement is found to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Agreement.

10.9 *Further Assurances.* The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

10.10 *Joint Preparation.* The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligation herein and that the preparation of this Agreement has been their joint effort. The language agreed to express their mutual intent 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.

10.11 *Priority of Provisions.* If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirements, or provision of this Agreement, the term, statement, requirement, or provision contained in Sections 1 through 10 of this Agreement shall prevail and be given effect.

10.12 *Compliance With Laws.* The parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

10.13 *Amendments.* No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City of Fort Lauderdale City Commission and the BMPO Board or others delegated authority to or otherwise authorized to execute same on their behalf.

10.14 *Prior Agreements.* This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

10.15 *Representation Of Authority.* Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he/she is, on the date he/she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

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**AGREEMENT BETWEEN THE BROWARD METROPOLITAN PLANNING ORGANIZATION
AND THE CITY OF FORT LAUDERDALE FOR ADMISTRATIVE SERVICES**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BMPO, signing by and through its Chair and Executive Director, duly authorized to execute same, and City, signing by and through its Mayor and City Manager, attested to and duly authorized to execute same.

CITY

CITY OF FORT LAUDERDALE

By: _____
John P. "Jack" Seiler, Mayor

____ day of _____, 2015

ATTEST:

Jonda K. Joseph, City Clerk

(SEAL)

By _____
Lee R. Feldman, City Manager

____ day of _____, 2015

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

By: _____
Cole J. Copertino, Assistant City Attorney

**AGREEMENT BETWEEN THE BROWARD METROPOLITAN PLANNING ORGANIZATION
AND THE CITY OF FORT LAUDERDALE FOR ADMINISTRATIVE SERVICES**

BMPO

BROWARD METROPOLITAN PLANNING
ORGANIZATION

By: _____
Gregory Stuart, Executive Director

By: _____
Richard Blattner, Chair

This ___ day of _____, 2015.

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE USE OF AND
RELIANCE BY THE BMPO ONLY:

By: _____
Alan L. Gabriel,
BMPO General Counsel
Weiss Serota Helfman Cole & Bierman, P.L.