

## TASK ORDER No. 1

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023

### INTERLOCAL AGREEMENT BETWEEN THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND THE CITY OF FORT LAUDERDALE, FLORIDA FOR TRANSPORTATION PLANNING SERVICES

#### Assessment of Alternatives for Enabling Commuter Rail to Cross the New River on the FEC Corridor

#### **PROFESSIONAL SERVICES**

This Task Order between the City of Fort Lauderdale, a Florida municipal corporation ("CITY") and the Broward Metropolitan Planning Organization ("BMPO"), is pursuant to an Interlocal Agreement ("ILA") between the parties, executed June 10, 2021, and expires 5 years from the date of execution, unless renewed. Pursuant to the ILA, the City of Fort Lauderdale seeks to utilize the procurement services of the BMPO to secure a consultant to conduct an Assessment of Alternatives for enabling a commuter rail to cross the New River on the FEC Corridor.

#### **PURPOSE**

The City of Fort Lauderdale wishes to access the BMPO's library of general planning consultant resources to provide professional transportation planning services to undertake an assessment of New River crossing alternatives focused on the intersection of the FEC corridor with the New River and the CITY's downtown corridor. A copy of the ILA is attached hereto and is incorporated herein as Exhibit "A".

#### **SPECIFIC SCOPE OF SERVICES**

1. The BMPO shall solicit a consultant that can further analyze the existing Florida Department of Transportation's studies of the New River Crossing. The consultant's scope of work shall include:
  - a. Project Overview
  - b. Rail Operator Engagement
  - c. Capital Cost Review
  - d. Operating and Maintenance Cost Review
  - e. Grant Opportunities
  - f. Comparative Case Studies; and

- g. Assessment of Permittability
  - h. Deliverables for each task
2. The BMPO will follow its standard procurement process and procedures in the selection of a consultant, negotiations of final scope and prices, and notice to proceed (NTP).
  3. An Evaluation Committee will review and rank the received proposals. The Evaluation Committee, subject to the BMPO Executive Director's approval, shall include one CITY, one COUNTY, and one BMPO representative. The process will be supervised by the BMPO's Procurement Manager.
  4. Negotiations to finalize the Consultant's Scope of Work and Fee, will be conducted by the BMPO's Procurement Manager and may include the consultant's Project Manager and the CITY's Project Manager.

### **Deliverables**

The BMPO's sole responsibility is administrative in nature and also to ensure the payment of consultant's invoices.

### **PERFORMANCE SCHEDULE**

The New River Crossing Alternatives project is anticipated to be completed by August 1, 2023. The City expects the BMPO to select a consultant to perform the services by January 20, 2023. The CITY has requested a duration of six (6) months from the Notice to Proceed for all deliverables. Actual duration is subject to negotiation with the selected consultant and will include additional duration beyond desired deliverable deadlines for administrative purposes as determined by the BMPO.

### **ADDITIONAL SERVICES**

If authorized in writing by the BMPO and the CITY, as an amendment to this Task Order, the BMPO shall furnish, or obtain, Additional Services of the types listed in the ILA.

### **PROJECT FUNDING**

Performance of this project is at the CITY's discretion and is subject to both the appropriation and availability of funds and subject to services rendered by the consultant along with a written Notice to Proceed authorization by the BMPO.

### **COMPENSATION**

Compensation will be in accordance with the terms and conditions as set forth in the ILA. Consistent with the ILA, the BMPO will provide general administrative oversight of the work order, limited to include processing of invoices, acceptance of payments from the CITY, and procurement processes.

The CITY will have five (5) business days from receipt of invoice to respond with an approval of the invoice or an explanation of corrections to be made. Communication of this determination should include the Consultant's Project Manager and the BMPO. Once approval from the CITY has been issued, the BMPO will process and pay the invoice. Final payment determination is made by the BMPO.

### **TERMS OF COMPENSATION**

Services will be provided for this Task Order in the Not-to-Exceed amount of \$500,000. City shall provide the BMPO with a \$500,000 payment which will be used by the BMPO to pay for the services rendered by the selected consultant. The BMPO will not impose an administrative fee on this task work order. At the time of Task Order execution, the CITY shall submit the Not-to-Exceed amount to the BMPO. The BMPO shall keep these funds in an isolated account and shall furnish monthly reporting to the CITY as to the account balance and the expended funds. The BMPO, after approval from the CITY, will pay the consultant's invoices from the Not-To-Exceed amount and any funds remaining after project completion shall be returned to the CITY from the BMPO.

### **CITY CONTACTS**

All correspondence and submittals should be directed to the attention of Ben Rogers, Director, Transportation and Mobility, at the address shown below. **Please be sure that all correspondence refers to the Task Order title as stated above.**

Ben Rogers, Director  
Transportation and Mobility Department  
City of Fort Lauderdale  
290 NE Third Avenue  
Fort Lauderdale, FL 33301  
Email: brogers@fortlauderdale.gov  
Phone: 954-828-3781

### **BMPO CONTACTS**

All correspondence and submittals should be directed to the attention of Paul Calvaresi, Intergovernmental Manager, at the address shown below.

Broward MPO  
Trade Centre South  
100 West Cypress Creek Road,  
6th Floor, Suite 650  
Fort Lauderdale, FL 33309  
(954) 876-0037 Direct  
(954) 876-0033 Office  
(954) 876-0062 Fax

[Calvaresip@browardmpo.org](mailto:Calvaresip@browardmpo.org)

**EFFECTIVE DATE**

This Task Order shall be effective when signed by both the CITY and the BMPO.

[The remainder of this page is intentionally blank, signature pages follow]

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

**BMPO**

**BROWARD METROPOLITAN  
PLANNING ORGANIZATION**

By: \_\_\_\_\_  
Gregory Stuart, Executive Director

By: \_\_\_\_\_  
Frank C. Ortis, Chair

This \_\_\_\_ day of \_\_\_\_\_, 2023.

This \_\_\_\_ day of \_\_\_\_\_, 2023.

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.

**CITY**

**CITY OF FORT LAUDERDALE, FLORIDA**

ATTEST:

\_\_\_\_\_  
David R. Soloman

By: \_\_\_\_\_  
Dean Trantalis, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Greg Chavarria, City Manager

\_\_\_\_ day of \_\_\_\_\_, 2023

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:  
D'Wayne M. Spence, Interim City Attorney

By: \_\_\_\_\_  
Kimberly Cunningham Mosley  
Assistant City Attorney

# EXHIBIT A

**INTERLOCAL AGREEMENT  
BETWEEN THE  
BROWARD METROPOLITAN PLANNING ORGANIZATION  
AND THE  
CITY OF FORT LAUDERDALE, FLORIDA  
FOR  
TRANSPORTATION PLANNING SERVICES**

THIS INTERLOCAL AGREEMENT ("Agreement") dated this 10<sup>th</sup> day of JUNE, 2021, by and between the **BROWARD METROPOLITAN PLANNING ORGANIZATION** ("BMPO"), and the **CITY OF FORT LAUDERDALE**, a Florida municipality ("City") is for transportation planning services ("Services").

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**, the BMPO is a legally independent government entity distinct from the City and is authorized pursuant to Sections 339.175 and 163.01, Florida Statutes, and has the authority to contract with the City for the provision of certain services to accomplish its metropolitan planning and programming 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 has expertise in metropolitan planning, land use analysis, and experience performing transportation/transit studies; public outreach and engagement, submitting for and obtaining transportation/transit related grants including the associated grant administration; and

**WHEREAS**, the City is seeking appropriate expertise in metropolitan planning, land use analysis, experience performing transportation/transit studies, public outreach and engagement, submitting for and obtaining transportation/transit related grants, and associated grant administration to better serve its present and future needs and the City desires to obtain these Services from the BMPO, as may be required from time to time by the City; and

**WHEREAS**, in addition to the BMPO's "in house/staff" transportation expertise, the BMPO has ongoing agreements with general transportation planning consultants that will be available to the City under the terms of this Agreement. These consultants were competitively procured in accordance with BMPO rules and State law; and

**WHEREAS**, the City and the BMPO will mutually agree to and subsequently approve the Scope of Services as specified herein, to perform the Services as may be requested by the City from time to time as outlined herein this Agreement; and

**WHEREAS**, the City agrees to compensate the BMPO for services rendered on behalf and at the request of the City as outlined herein this Agreement; and

**WHEREAS**, on May 5<sup>th</sup>, 2021, the City Commission authorized the Mayor and City Manager to execute this Agreement with the BMPO to perform these Transportation Planning Services as hereinafter described; and

**WHEREAS**, on JUNE 10<sup>th</sup>, 2021, the BMPO Board authorized the appropriate BMPO officials to execute this Agreement with the City to perform these Services as hereinafter described; and

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

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, 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 “Agreement” -- means this document, Sections 1 through 12 inclusive. Other terms and conditions are included in the exhibits and documents that are attached hereto and are incorporated herein.
- 1.2 “BMPO” -- The Broward Metropolitan Planning Organization is the federally designated transportation policy-making board for Broward County, Florida.
- 1.3 “BMPO Board” -- The Broward Metropolitan Planning Organization governing Board.
- 1.4 “City” -- The City of Fort Lauderdale, a Florida, municipality.
- 1.5 “Contract Administrator” -- The Broward Metropolitan Planning Organization Executive Director and the City Manager shall each designate a Contract Administrator. The primary responsibilities of each Contract Administrator are to coordinate and communicate with the other Contract Administrator and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contracted with matters of policy, all parties may rely on the instructions or determination made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.6 “Recitals” -- The Whereas recitals set forth above are true and correct and are incorporated herein.
- 1.7 “Services” -- The term services shall mean transportation planning service including, but not limited to, metropolitan planning, land use analysis, transportation/transit studies, public outreach and engagement, preparation and submittal of transportation/transit related grants, and associated grant administration.

## **SECTION 2 PURPOSE**

PURPOSE. This Agreement is for the purpose of authorizing the BMPO to provide Services, as defined in Section 1.7, to the City in exchange for consideration under the terms contained in this Agreement.

## **SECTION 3 SCOPE OF SERVICES**

- 3.1 BMPO may, but is not required to enter into an agreement for any one, or any combination of the Services, as defined in Section 1.7. The BMPO reserves the right, in its sole discretion, to use BMPO staff, BMPO consultants or any combination thereof to provide any of these Services included in this Agreement.

- 3.2 The City may, but is not required to, enter into an agreement for any one, or any combination of these Services. The City reserves the right, at its sole discretion, to use the services of another consultant of the City's selection, not included in this Agreement, to complete any of these Services included in this Agreement.

#### **SECTION 4 AUTHORIZATION OF SERVICES**

- 4.1 When the need for Services for a project occurs, the City may, at its sole discretion, enter into negotiations with the BMPO for such project under the terms and conditions of this Agreement. The City shall initiate said negotiations by providing the BMPO with a written task work order request which shall include:
- A. Draft Scope of Services;
  - B. Proposed deliverables;
  - C. Proposed schedule requirements; and
  - D. Other relevant information.
- 4.2 The City and BMPO shall work cooperatively to develop a mutually acceptable and agreeable task work order proposal which shall conform to the requirements of this Section 4.
- 4.3 The task work order proposal provided by the BMPO will include but not be limited to the following negotiated terms:
- A. The Scope of Services;
  - B. The deliverables (e.g. report, drawings, specifications, cost estimates, etc.);
  - C. The time and schedule of performance and term;
  - D. The method and amount of compensation; and
  - E. Staff Plan that identifies both City and BMPO staff and consultant resources, if any.
- 4.4 The City Manager is authorized to negotiate and execute task work order proposals that do not to exceed \$100,000. Any task work order proposals in excess of \$100,000, shall require approval by the Fort Lauderdale City Commission.
- 4.5 The BMPO's Executive Director is authorized to negotiate and execute task work orders and may, in his/her discretion, bring proposed task work orders to the BMPO Executive Committee or the BMPO Board for approval, as may be required consistent with the BMPO Rules.

#### **SECTION 5 COMPENSATION**

- 5.1 In consideration for the Services provided by the BMPO to the City, the City shall compensate or reimburse the BMPO, as set forth in Exhibit "A", attached hereto and

incorporated herein, for the costs incurred by the BMPO for the Services rendered by the BMPO or the BMPO's consultants, in any mutually agreed and accepted task work order. The City agrees to fully fund each task work order.

- 5.2 The BMPO agrees to invoice the City and the City agrees to make payment to the BMPO for the Services rendered to the City consistent with executed task work orders and pursuant to Exhibit "A", attached hereto and incorporated herein. BMPO shall invoice on a monthly basis and include the task work order, project name if applicable, nature of the services performed, the date the work was performed, the total number of hours of work performed, and the name of the individuals and consultant firms performing same.
- 5.3 Payments from the City shall be made to the BMPO at the address provided in the notice section contained herein.
- 5.4 City shall pay the BMPO in accordance with the Florida Prompt Payment Act.

## **SECTION 6 BMPO's RESPONSIBILITY**

- 6.1 The BMPO agrees to provide Services to the City pursuant to applicable federal, state and local laws, codes, rules and regulations. Services are set forth in Section 3 of this Agreement. The BMPO shall also be responsible for the administration and overall coordination required for these Services. The BMPO's staff shall provide Services pursuant to this Agreement in a professional, courteous, effective and efficient manner.
- 6.2 **OVERSIGHT AND EVALUATION.** BMPO will coordinate with City so that BMPO and City may evaluate the Services provided annually. BMPO will take reasonable care to ensure that Services meet City's satisfaction. BMPO shall use its consultants as well as its own employees, personnel, building space, equipment and facilities in performing this Agreement. In providing Services under this Agreement, BMPO's staff shall not be under the supervision or control of the City except as specified under this Agreement or as may be described in any mutually agreed and accepted task work order. BMPO shall pay all compensation, employee benefits, taxes, insurance, social security, and unemployment insurance for its employees. BMPO's staff shall be considered employees of BMPO for all purposes and shall not be considered employees of City for any purpose. All necessary disciplinary actions shall be at the exclusive discretion of and be implemented by BMPO.
- 6.3 BMPO shall timely fulfill, or cause to be fulfilled, all of the conditions expressed in this Agreement and as outlined and approved by each mutually agreed and accepted task work order.
- 6.4 All work performed for the BMPO by a consultant will be pursuant to an appropriate agreement between the BMPO and its consultant, which specifically binds the consultant to the applicable terms and conditions of this Agreement pursuant to an applicable agreed task work order, for the benefit of the City. The BMPO will be responsible for the

payments to any consultant including any professional fees and costs. The City shall not be responsible for any direct payments to any such mutually agreed and approved consultant(s).

- 6.5 The BMPO shall perform various activities/tasks related to the Services, as detailed in each subsequent mutually agreed and accepted task work order.
- 6.6 The BMPO shall have no obligation to independently fund the costs of the Services.

## **SECTION 7 CITY'S RESPONSIBILITY**

- 7.1 The City shall prepare and submit to the BMPO written task work order proposal requests for Services when warranted by the City, together with all related supporting documentation necessary to perform the requested Services consistent with applicable federal, state and local laws, codes, rules and regulations.
- 7.2 The City agrees that the BMPO is not responsible for any City liability and is only responsible for providing the City with Services as requested by the City from time to time.
- 7.3 The City agrees to furnish the BMPO any documents required to satisfy and complete the agreed Services as outlined and approved by each mutually agreed and accepted task work order for related Services.
- 7.4 The City and the BMPO agree to cooperate and comply with the terms of this Agreement or any mutually agreed and accepted task work order(s).

## **SECTION 8 TERM AND TERMINATION**

- 8.1 This Agreement shall commence on the date this instrument is fully executed by all parties and shall end five (5) years from the executed date unless and until terminated. Subject to BMPO's mutual consent, the City reserves the right to renew this Agreement for one (1) additional five-year period under the same terms and conditions and such renewal is approved by the City with the same or similar formality as this Agreement.
- 8.2 Either party may terminate this Agreement for convenience at any time with sixty (60) days prior written notice to the other. In the event this Agreement is terminated for convenience, BMPO shall be paid for services performed pursuant to the Agreement through the termination date specified in the written notice of termination.
- 8.3 In the event of a breach by either party, the non-breaching party shall notify the other party, in writing of the breach and of the time to cure the breach ("Notice to Cure"). If such breach is not cured, or sufficient effort is not made by the non-breaching party, as determined solely by the non-breaching party, to cure said breach within thirty (30)

business days after the date of the Notice to Cure, the non-breaching party may terminate this Agreement upon sixty (60) days written notice to the other party.

- 8.4 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.
- 8.5 In the event this Agreement (which shall include any approved outstanding task work order) is terminated for any reason, including Agreement expiration, the BMPO shall be paid for any Services performed to the date the Agreement is terminated; however, upon being notified of the City's election to terminate, the BMPO shall refrain from performing further Services or incurring additional expenses under the terms of this Agreement (as well as any then outstanding task work order), unless otherwise specifically requested by City.

#### **SECTION 9 EFFECTIVE DATE**

This Agreement shall be fully executed by the parties. Thereafter, prior to its effectiveness, 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 section 163.01(11) Florida Statutes (2020).

#### **SECTION 10 INDEMNIFICATION GOVERNMENTAL IMMUNITY**

- 10.1 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 Section 768.28, Florida Statutes, and shall be fully responsible for the negligent or wrongful acts or omissions of their agents or employees, while acting within the scope of their office or employment pursuant to Section 768.28, Florida Statutes (2020), as may be amended or revised.
- 10.2 To the fullest extent permitted by law, the City and BMPO agree to indemnify and hold the other's officials, elected officials, volunteers, employees and agents harmless from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by their own negligence, recklessness, or intentionally wrongful conduct or of that of 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 11**  
**BOOKS AND RECORDS AND PUBLIC RECORDS**

- 11.1 Each party shall retain all records related to this Agreement and any Services provided hereunder in accordance with the State of Florida public records retention law and applicable Federal rules and regulations. 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.

**IF THE BMPO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BMPO DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FL 33301, PRRCONTRACT@FORTLAUDERDALE.GOV**

- 11.2 BMPO shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with Florida law, BMPO shall:

- 11.2.1 Keep and maintain public records required by the City to perform the service.
- 11.2.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2020), as may be amended or revised, or as otherwise provided by law.
- 11.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the BMPO does not transfer the records to the City;
- 11.2.4 Upon completion of each task and upon the completion of the Agreement, transfer, at no cost, to the City all public records in possession of the BMPO or keep and maintain public records required by the City to perform the service. If the BMPO transfers all public records to the City upon completion of the Agreement, the BMPO shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the BMPO keeps and maintains public records upon completion of the Agreement, the BMPO shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If BMPO does not comply with this Section, the City shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

- 11.3 RECORDS and FILES. The BMPO will maintain all records produced pursuant to this Agreement and shall comply with provisions as set forth in Section 11.2. At the completion of any land use approval/review action covered by this Agreement, said records and files shall be transferred to the City. At the termination or expiration of this Agreement, all remaining records and files shall be transferred and maintained by the City.
- 11.4 The City will maintain its own records and documents associated with this Agreement in accordance with the records retention requirements applicable to the Florida Public Records Laws. The City shall be responsible for compliance with any public records request served upon it pursuant to Section 119.07, Florida Statutes.
- 11.5 This Section 11 shall survive the expiration or termination of this Agreement.

## SECTION 12 GENERAL PROVISIONS

- 12.1 ASSIGNMENT/SUBCONTRACTING. 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.
- 12.2 NOTICES. Any notices required by this Agreement shall be in writing and shall be 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:

Christopher J. Lagerbloom, ICMA-CM  
City Manager  
City Manager's Office  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

With a copy to:

Benjamin Rogers  
Transportation and Mobility, Director  
290 NE 3<sup>rd</sup> 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 650  
Fort Lauderdale, FL 33309-2112

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

12.3 Litigation; Venue; Limitation of Actions; Waiver of Jury.

12.3.1 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 situated exclusively in 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, BY ENTERING INTO THIS AGREEMENT, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

12.3.2 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.

12.4 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.

12.5 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 subsequent 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.

- 12.6 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.
- 12.7 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.
- 12.8 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, and shall not be construed more strictly against either party.
- 12.9 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.
- 12.10 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.
- 12.11 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.
- 12.12 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.
- 12.13 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.
- 12.14 Exclusivity. The parties agree that this is not an exclusive service agreement. The BMPO may provide similar services to other entities.

12.15. Non-Discrimination. No party shall discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

12.16. Scrutinized Companies

As a condition precedent to the effectiveness of any contract for goods or services of \$1 million or more and as a condition precedent to the renewal of any contract for goods or services of \$1 million or more, subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the BMPO certifies and shall require any general transportation planning consultants under the terms of this Agreement to certify that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. As a condition precedent to any contract for goods or services of any amount and as a condition precedent to the renewal of any contract for goods or services of any amount, the BMPO certifies and shall require any general transportation planning consultants under the terms of this Agreement to certify that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the BMPO or its general transportation planning consultants under the terms of this Agreement are found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, or is engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2020), as may be amended or revised.

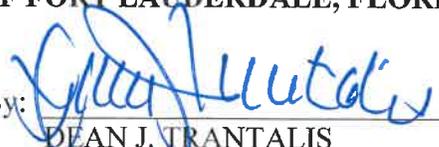
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**AGREEMENT BETWEEN  
THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND THE CITY  
OF FORT LAUDERDALE, FLORIDA FOR TRANSPORTATION PLANNING  
SERVICES**

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, FLORIDA**

By:   
DEAN J. TRANTALIS  
Mayor

17 day of May, 2021

By:   
CHRISTOPHER J. LAGERBLOOM, ICMA-CM  
City Manager

11 day of May, 2021

ATTEST:



By: \_\_\_\_\_  
JEFFREY A. MODARELLI  
City Clerk



(SEAL)

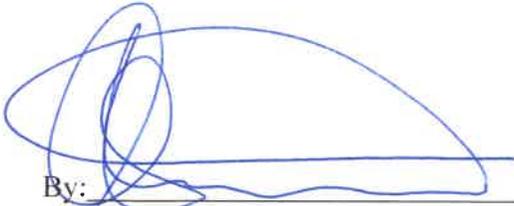
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

ALAIN E. BOILEAU, City Attorney

By:   
KIMBERLY CUNNINGHAM MOSLEY  
Assistant City Attorney

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

**BMPO**

By:   
\_\_\_\_\_  
Gregory Stuart, Executive Director

This 10<sup>th</sup> day of JUNE, 2021.

BROWARD METROPOLITAN PLANNING ORGANIZATION

By:   
\_\_\_\_\_  
Frank C. Ortis, Chair

This 10<sup>th</sup> day of JUNE, 2021.

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.

## EXHIBIT "A"

### COMPENSATION

Compensation shall be conditioned upon prior written mutually agreed work authorization(s) determined as follows:

1. BMPO
  - a) By Project/Grant/Activity -- Calculated by estimated or budgeted staff hours, then current salary cost of employee, including overhead, plus an agreed administrative fee; or
  - b) Administrative overhead fee based upon total project/activity cost or grant amount.
2. BMPO CONSULTANT(S)
  - a) The City shall pay for the actual cost of services rendered by BMPO Consultants for those services that are required by Project/Grant/Activity.
  - b) The cost shall include, but not be limited to salary, benefits and administrative overhead. The service fee for services performed by BMPO Consultants shall be equal to the BMPO then current Consultants hourly contracted rate.

OR

3. AS MAY BE OTHERWISE MUTUALLY AGREED AND DETERMINED ON A PROJECT BY PROJECT BASIS.