

Agreement for Administrative Services

Between The

Broward Metropolitan Planning Organization

And The

Downtown Fort Lauderdale Transportation Management Association, Inc.

This agreement ("Agreement") is made and entered into this ____ day of _____, 2021 by and between the **Broward Metropolitan Planning Organization** ("BMPO") created and operating pursuant to the provisions of Chapters 163 and 339, Florida Statutes and the **Downtown Fort Lauderdale Transportation Management Association, Inc.** ("TMA"), a 501 (c) 3 non-profit corporation, collectively referred to as the "Parties".

WITNESSETH

WHEREAS, Section 339.175, Florida Statutes, provides for the designation of a 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 Broward urbanized area and the BMPO is duly created and operated pursuant to an interlocal agreement between the Florida Department of Transportation ("FDOT") and the affected units of general purpose local government within the Broward urbanized area; and

WHEREAS, the TMA is created pursuant to the provisions of Chapter 341, Florida Statutes which is known as the "Florida Public Transit Act" and is organized exclusively for social welfare and educational purposes as those terms are defined and limited by Section 501 (c) (3) of the Internal Revenue Code (1954), as amended.

WHEREAS, the TMA provides the following services:

- (i) Provides a forum for developers, employers and property owners to address common transportation concerns and to work cooperatively with government to mitigate the impacts of traffic congestion through a transportation management program;
- (ii) Reduce traffic congestion, air pollution, and parking needs by providing trolley service in the urban core and other high density areas;
- (iii) Promotes efficient transportation demand management systems and programs that will enhance the area's competitiveness and economic vitality and continue its image as an attractive place in which to live, work, visit, and conduct business;
- (iv) Administers contributions and grants to the TMA from public and private sources and funds under contracts with public agencies and private organizations, in accordance with the

terms and conditions of such contributions, grants, and contracts and in keeping with the purposes of the TMA as stated in its Articles of Incorporation and Bylaws; and

(v) Exercises all rights and powers granted to nonprofit corporations to fulfill its purposes, subject to such limitations as may be contained in the Articles of Incorporation or its Bylaws; and

WHEREAS, both the BMPO and the TMA are legally independent entities and have the authority to contract with other entities for the provision and exchange of certain products or services within the parameters as defined in this Agreement; and

WHEREAS, the TMA wishes to obtain certain products or support services from the BMPO to assist the TMA in improving transportation options through advocacy, programs, education, and services, and to contract with the BMPO for same; and

WHEREAS, the BMPO wishes to obtain certain products or support services from the TMA to assist the BMPO in managing the continuing, cooperative, and comprehensive transportation planning process mandated by state and federal law, and to contract with the TMA for same; and

WHEREAS, both the BMPO and the TMA have the authority to enter into this Agreement and to provide the products or services hereinafter described; and

WHEREAS, the purpose of this Agreement is to define the products or services to be provided and to fix the compensation for such.

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

1. RECITALS

Each and all of the foregoing recitals (“WHEREAS” clauses) are hereby incorporated into this Agreement by reference. The failure of any of the recitals to be true and correct shall not invalidate this Agreement.

2. PURPOSE AND SCOPE

The purpose of this Agreement is limited to setting forth the terms and conditions applicable to the mutual provision of Products and Support Services (collectively referred to herein as the “Services”). The BMPO has no other authority, express or implied, over the TMA Governing Board, the TMA Executive Director, or the TMA Staff.

3. EFFECTIVE DATE, TERM AND TERMINATION.

- a) **Effective Date.** This Agreement shall be effective as of April __, 2021 (“Effective Date”).
- b) **Term.** This Agreement shall commence on the Effective Date (as defined herein) and

shall continue up to and include September 30, 2022. This Agreement shall automatically renew for successive two (2) year periods, unless either party shall give the other not less than ninety (90) days prior written notice of its intent not to allow the Agreement to renew.

- c) **Termination for Convenience.** Either party may terminate this Agreement for convenience upon not less than one-hundred eighty (180) days prior written notice to the other party.
- d) **Termination for Cause.** 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 fifteen (15) days written notice to the other party.
- e) **Termination – Records and Payment.** Upon termination of this Agreement for any reason, each party shall turn over to the other party within a reasonable period of time (not to exceed 30 days) all records held by it with respect to this Agreement. Either party shall release all funds of the other party then held after application thereof to any outstanding amounts owed hereunder. The parties agree that neither party waives any of its rights to seek damages of any kind against the other party in the event of the other party’s default under this Agreement.

After termination, this Agreement shall be of no further continuing effect and the parties shall have no obligations to each other hereunder except those specifically noted as surviving termination and those arising on or before the date of termination.

4. TMA RESPONSIBILITY.

- (a) TMA shall endeavor to provide the following Services:
 - i. Leverage collective goals, such as to test new transportation innovations and trends;
 - ii. Conduct technical exchange related to resiliency and sustainability;
 - iii. Assist with project development related to transit;
 - iv. Strengthen collaborative opportunities with key Broward employers and property owners;
 - v. Maximize funding sources with private-sector contributions;
 - vi. Expand community reach of both the BMPO and the TMA;
 - vii. Reinforce staff skill sets; and
 - viii. Bolster one another’s missions to achieve a measurable impact in Broward County.
- (b) The TMA shall allow the BMPO to have the right to designate one board seat with full voting rights to the TMA Executive Board of Directors.

- (c) The TMA shall engage and work cooperatively with BMPO staff to develop an annual Strategic Plan that benefits the missions of both Parties.
- (d) The TMA shall execute the Strategic Plan in good faith.
- (e) The TMA shall submit invoices to the BMPO on a monthly basis in a format acceptable to the BMPO and for fees defined in Section 6.

5. BMPO RESPONSIBILITY

- (a) The BMPO shall provide the TMA access to BMPO support staff on a limited as-needed basis and with the prior verbal approval of the BMPO Executive Director.
- (b) The BMPO shall review the TMA invoices and shall approve or reject such invoices within ten (10) business days after receipt. The BMPO shall process payment of any approved invoices within (30) calendar days after each invoice is approved.
- (c) The BMPO shall have no management, control, or responsibility for TMA employees, and the TMA shall adopt and implement its own employment policies, including recruitment, retention, promotion, supervision, discipline and evaluation of TMA employees.

6. FEES

- (a) The Parties shall cooperatively develop and mutually approve a budget that aligns with the scope of the Strategic Plan and those Services provided pursuant to this Agreement.
- (b) The BMPO shall pay to the TMA a monthly fee for those Services provided to the BMPO by the TMA pursuant to this Agreement. The monthly fee shall be reflected in the approved budget pursuant to Section 6(a).
- (c) The TMA shall pay to the BMPO a monthly fee for those Services provided to the TMA pursuant to this Agreement. The monthly fee shall be reflected in the approved budget pursuant to Section 6(a).

7. INDEMNIFICATION

In the event of any legal protests or litigation relating to any TMA procurements, employment matters or any other actions taken by the TMA while this Agreement is in effect, the TMA shall, to the extent permitted by law, save harmless, indemnify, and defend BMPO, BMPO's consultants and contractors, and their agents, officers and employees from any and all claims, losses, penalties, demands, judgments, and costs of suit, including, but not limited to, worker's compensation claims, and including attorneys' fees and paralegals' fees, for any expense, damage or liability incurred by any party indemnified hereunder, whether for personal injury, property damage, direct or consequential damages, or economic loss, which arose from TMA's negligence with respect to

any actions taken by the TMA while this Agreement is in effect or resulting from the use by the TMA, or by any one for whom the TMA is legally liable, of any materials, tools or other property of BMPO. The TMA's obligations under the above section shall survive the expiration, termination or cancellation of this Agreement until the expiration of any applicable Statute of Limitation for any such claim, demand, cause of action or proceeding of whatsoever kind.

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.

8. MISCELLANEOUS.

(a) **Notices.**

Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to and received by the party intended to receive it (i) by hand delivery to the person(s) hereinafter designated, or (ii) by overnight hand delivery (such as FedEx) addressed as follows, or (iii) through the United States Mail, postage prepaid, certified mail, return-receipt requested, or (iv) delivered and received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered to and received by the person to whom it is at the address set forth opposite the party's name below:

To BMPO: BMPO Executive Director
 100 West Cypress Creek Road
 6th Floor, Suite 650
 Fort Lauderdale, Florida 33309

With a copy to: Alan L. Gabriel, Esq.
 Weiss Serota Helfman Cole & Bierman, P.L.
 200 East Broward Boulevard, Suite 1900
 Fort Lauderdale, Florida 33301

To TMA: TMA Executive Director
 1700 SW 12th Street
 Boca Raton, Florida 33486

With a copy to: Stephanie Toothaker, Esq.
 401 East Las Olas Boulevard, Suite 130-154
 Fort Lauderdale, Florida 33301

(b) **Force Majeure.**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any provision of this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances, which are reasonably beyond the control of the party

obligated or permitted under the terms of this Agreement to do or perform the same, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

(c) **Relationship of Parties.**

This Agreement is not intended to create and does not create an agency or independent contractor relationship between the BMPO and TMA.

(d) **Incorporation by Reference.**

The "Whereas" recitals, at the beginning of this Agreement are true and correct and, by this reference, are made a part hereof and are incorporated herein. Similarly, all exhibits and other attachments to this agreement that are referenced to this Agreement are, by this reference made a part hereof and are incorporate herein.

(e) **Governing State Law; Venue.**

The rights, obligations and remedies of the parties as specified under this Agreement shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of this Agreement be determined by the courts to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired. Venue for litigation of this Agreement shall be in courts of competent jurisdiction located in Broward County, Florida.

(f) **Severability.**

If any term, provision or remedy of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term, provision or remedy of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) **Headings.**

Article and section headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

(h) **Construction.**

Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "*Fortius Contra Proferentem*" shall not be applied to the interpretation of this Agreement.

(i) **Assignability.**

This Agreement shall not be assigned by either party without the express written permission of the other party.

(j) **Entire Agreement/Amendments.**

This Agreement constitutes the entire agreement between the parties hereto. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party, or any representative of either party, which is not expressed herein shall be binding. All changes to, additions to, modifications of, or amendment to this Agreement, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

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

[SIGNATURE PAGES FOLLOW]

BMPO

ATTEST:

BROWARD METROPOLITAN PLANNING
ORGANIZATION

By: _____
Gregory Stuart, Executive Director

By: _____
Frank Ortis, Chair

___ day of _____, 2021.

___ day of _____, 2021.

Approved as to form and legal sufficiency
for the use of and reliance by the BMPO only:

By: _____
Alan L. Gabriel, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.

TMA Admin Services Agr. BMPO (FNL. 1.20.21)

TMA

ATTEST:

DOWNTOWN FORT LAUDERDALE
TRANSPORTATION MANAGEMENT
ASSOCIATION, INC.

By: _____
Robyn Chiarelli, Executive Director

___ day of _____, 2021.

By: _____
Gregory Stuart, TMA Board Chair

___ day of _____, 2021.

By: _____
Elizabeth Van Zandt, TMA Board Vice-Chair

___ day of _____, 2021.

Approved as to form and legal sufficiency:

Stephanie Toothaker, Esq.
TMA Board Secretary