

**AGREEMENT FOR  
BOARDROOM VOTING SYSTEM UPGRADE**

**BROWARD METROPOLITAN PLANNING ORGANIZATION  
and  
INTENT DIGITAL, LLC**

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This Agreement for Boardroom Voting System Upgrade (“Agreement”) is made by and between **Broward Metropolitan Planning Organization** (“Client”), with offices at 100 West Cypress Creek Road, Suite 650, Fort Lauderdale, Florida 33309, and **Intent Digital, LLC**, (“Provider”) an Arizona limited liability company, with offices at 3104 E. Camelback Road, Suite 445, Phoenix, AZ 85016, effective as of the date written below.

**RECITALS**

- A. The Client desires to enter into this Agreement in order to obtain boardroom voting system upgrade for the Client’s offices as outlined in the Scope of Services attached as Exhibit “A”; and
- B. Provider has available and offers to provide the personnel necessary to provide said services in accordance with the Scope of Services included in this Agreement (see Exhibit A attached hereto and incorporated herein); and
- C. Provider is in the business of providing boardroom voting system upgrade for businesses, and represents and warrants that it has the skills, qualifications, expertise and experience necessary to perform the work and services to provide and implement the required services as described herein, in an efficient, cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers; and
- D. The BMPO Executive Director has determined that the subject boardroom voting system upgrade as identified herein is unique to this particular vendor and as such acquisition of these services from Provider, as a sole source purchase, as permitted by the Client’s Procurement Rules, is in the best interest of the Client; and
- E. On the basis of and in reliance upon such representations by Provider and others made herein and in Provider’s proposal, the Client desires to engage Provider to provide the work and services described herein under the terms and conditions of this Agreement; and
- F. BMPO’s Board of Directors (the “Board”) on \_\_\_\_\_, 2021, upon the recommendation of the BMPO’s Executive Director, authorized the appropriate BMPO officials to execute this Agreement with the Provider.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Client and Provider agree as follows:

## 1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

- 1.1 Provider agrees to provide the work and services as set forth in detail in Exhibit "A" (entitled "Scope of Services" and so called herein) attached hereto and hereby incorporated as part of this Agreement. All of the terms and conditions set forth and pertaining to the services in Exhibit "A" shall be incorporated in this Agreement as if fully set forth herein.
- 1.2 The Federal Transit Administration ("FTA") Required Contractual Provisions (attached hereto as Exhibit "B-1"), and the Federal Highway Administration ("FHWA") Required Contractual Provisions (attached hereto as Exhibit "B-2), collectively hereafter referred to as the "Federal Contractual Provisions" are attached hereto and made a part hereof, collectively as Exhibit "B". Prior to beginning the performance of any services under this Agreement, the Provider will be provided with a Notice to Proceed from the Client. This Notice to Proceed will specify the applicable Federal Contractual Provisions which will apply to this Agreement and the services to be provided accordingly.

## 2. COMPENSATION OF PROVIDER

- 2.1 Provider agrees to provide all of the services set forth in the Scope of Services and as described herein for the following amounts:
  - (a) The Client shall pay to Provider an amount of **Two Hundred Thirty One Thousand, Two Hundred Two and 84/100 Dollars (\$231,202.84)** for the Phase 1 Services, as identified and described on the attached Exhibit "A", "Phase One – VoteLynx GUS Software System", and **Ninety Six Thousand Eight Hundred Sixty Nine and No/100 Dollars (\$96,869.00)** for the Phase 2 Services, as identified and described on the attached Exhibit "A", "Phase 2 – VoteLynx GUS Controller Upgrade". The total compensation amount under this Agreement for both Phase 1 and Phase 2, shall not exceed **Three Hundred Twenty Eight Thousand, Seventy One and 84/100 Dollars (\$328,071.84)**.
  - (b) Provider may submit an invoice for compensation, developed and agreed upon by the BMPO Executive Director and Provider, no more often than on an annual basis, but only after the services for which the invoices are submitted have been completed. Invoices shall designate the nature of the services performed and shall also show a summary of fees with accrual of the total and credits for portions paid previously.

- 2.2 Payments will be processed on an annual basis, with payment being made no later than thirty (30) days after the anniversary date of this Agreement, after receipt of an invoice for the previous month's service. Invoices shall designate the nature of the services performed each year. All payments pursuant to this Agreement shall be made promptly, in compliance with Florida's Prompt Payment Act, and without undue delay, and in no circumstance beyond 60 days from the due date.
- 2.3 Provider agrees to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged for which Provider receives reimbursement for a period of at least three (3) years after completion of the work provided for in this Agreement. Such books and records shall be available at all reasonable times for examination and audit by Client.
- 2.4 If it should become necessary for Client to request Provider to render any additional services to either supplement the services described in the Scope of Services or to perform additional work, such additional work shall be performed only if set forth in an amendment to this Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees included in Exhibit "A".

### **3. RIGHTS AND OBLIGATIONS OF PROVIDER**

- 3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the Client as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the Client. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement. Services provided by Provider shall be by employees of Provider and subject to supervision by Provider, and not as officers, employees or agents of the Client. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, travel, per diem policy, and purchasing policies under this Agreement shall be the sole responsibility of Provider. Provider shall have no rights under the Client's worker's compensation, employment, insurance benefits or similar laws or benefits.
- 3.2 Provider's Control of Work. All services to be provided by Provider shall be performed as determined by the Client in accordance with the Scope of Services set forth in Exhibit "A." Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.
- 3.3 Reports to the Client. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the Client and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the Client and the rights

of the Client, as set forth in the Scope of Services, and the right of the Client to audit Provider's records.

- 3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by laws, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.
- 3.5 Organization and Authorization. Provider warrants and represents that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and which shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of Provider; (v) it has the right and authority to sell the software to the Client; (vi) all software shall be in good working order; and, (vii) all licenses and warranties regarding the software and hardware shall be conveyed to the Client.
- 3.6 No Conflict. Provider warrants and represents that the execution and delivery of this Agreement and ancillary agreements hereto by Provider does and will not: (i) conflict with, or result in any violation or breach of, any provision of Provider's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Provider is a party; or (iii) conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to Provider.
- 3.7 Warranty. Provider warrants that any software or equipment provided by Provider (as identified and described in the Scope of Services, "Boardroom Voting System Upgrade") will be covered under individual "OEM" standard warranty periods. In the event of any equipment failure within the designated "OEM" period during the term of the Agreement, Provider shall ship replacement parts or equipment as available using overnight shipping services. Provider will invoice the Client for all equipment and shipping cost.

#### **4. NOTICE PROVISIONS**

Notice. Any notice concerning this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, postage prepaid, (ii) delivered personally, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; and addresses for such notice are as follows:

To the Client's Authorized  
Representative:

Juan Canez, Broward MPO  
100 W. Cypress Creek Road, Ste. 650  
Fort Lauderdale, Florida 33309  
954-876-0063

To the Provider:

Todd Sharp, Intent Digital, LLC  
3104 E. Camelback Road, Suite 445  
Phoenix, AZ 85016  
602-404-0100

Notice shall be deemed given upon receipt by the party to whom it is sent.

## 5. INDEMNIFICATION

Provider (hereinafter referred to as "Indemnitor") agrees to indemnify, save and hold harmless the Client, any jurisdiction or agency issuing permits for any work under this Agreement, and their respective directors, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage to the extent caused by the negligent act, omission, negligence or misconduct of the Indemnitor, or any of Indemnitor's directors, officers, agents, employees or volunteers. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree in effect at the time services are rendered. Provider shall be responsible for defense, and judgment costs where this indemnification is applicable.

## 6. INSURANCE

Provider and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The Client in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

**A. Minimum Scope and Limits of Insurance.** Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form  
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000

Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

2. <u>Workers' Compensation and Employer's Liability</u>	
Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

**B. SELF-INSURED RETENTIONS/DEDUCTIBLES:** Any self-insured retentions and deductibles must be declared to and approved by the Client. If not approved, the Client may require that the insurer reduce or eliminate such self-insured retentions with respect to the Client, its officers, agents, employees, and volunteers.

**C. OTHER INSURANCE REQUIREMENTS:** The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability Coverages:

- a. Broward Metropolitan Planning Organization, its officers, officials, agents, and employees are additional insured with respect to liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider, and automobiles owned, leased, hired or borrowed by the Provider.
- b. The Provider's insurance shall contain broad form contractual liability coverage.
- c. The Client, its, officers, officials, agents, employees and volunteers shall be additional insured to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
- d. The Provider's insurance coverage shall be primary insurance with respect to the Client, its, officers, officials, agents, and employees. Any insurance or self-insurance maintained by the Client, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.
- e. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- f. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

- g. The policies shall contain a waiver of subrogation against the Client, its officers, officials, agents, and employees for losses arising from work performed by the Provider for the Client.
- 2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Client, its officers, officials, agents, employees and volunteers for losses arising from work performed by the Provider for the Client.
- 6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be amended, suspended, voided or canceled except after sixty (60) days prior written notice has been given to the Client, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the Client. Such notice shall be sent directly to:

Procurement Office  
Broward Metropolitan Planning Organization  
100 West Cypress Creek Road, Suite 650  
Fort Lauderdale, Florida 33309

- 6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Florida and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the Client. The Client in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.
- 6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the Client with certificates of insurance (ACORD form or equivalent approved by the Client) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements shall be received and approved by the Client before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Procurement Office, Broward Metropolitan Planning Organization, 100 West Cypress Creek Road, Suite 650, Fort Lauderdale, FL 33309**. The Client project/contract number and project description shall be noted on the certificate of insurance. The Client reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time. The Client shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the Client's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

- 6.4 Subcontractors. Provider's certificate(s) shall include all subcontractors as additional insured under its policies or Provider shall furnish to the Client separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the Client Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

## 7. **DEFAULT AND TERMINATION**

- 7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the Client;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the Client;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the Client as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

- 7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
- 7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this Agreement.

7.2.1 Upon the occurrence of any Event of Default, the Client may declare Provider in default under this Agreement. The Client shall provide written notification of the Event of Default and any intention of the Client to terminate this Agreement. Upon the giving of notice, the Client may invoke any or all of the following remedies:

- 7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;
- 7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;
- 7.2.1.3 The right to monetary damages;
- 7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;
- 7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the Client; and
- 7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The Client may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the Client, and that if the Client allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the Client be deemed to waive or relinquish any of its rights under this Agreement.

7.3 Right to Offset. Any excess costs incurred by the Client in the event of termination of this Agreement for default, or in the event the Client exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the Client the balance upon written demand from the Client.

## 8. GENERAL PROVISIONS

- 8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall prevail. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.
- 8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Florida. Provider hereby submits itself to the original jurisdiction of those courts located within Broward County, Florida.
- 8.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.
- 8.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.
- 8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by either the Client or Provider without prior written consent of the other.
- 8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest.
- 8.7 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.
- 8.8 Integration. This Agreement represents the entire understanding of Client and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.
- 8.9 Non-appropriation. If the BMPO Board does not appropriate funds to continue this Contract and pay for charges hereunder, the Client may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the Client's payment obligations hereunder. The Client agrees to give

written notice of termination to the Provider at least thirty (30) days prior to any termination for a lack of funds and will pay to the Provider all approved charges incurred prior to Provider's receipt of such notice.

- 8.10 Subcontractors. This Agreement or any portion thereof shall not be sub-contracted without the prior written approval of the Client. No Subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The Client shall deal through Provider and any Subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the Client for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the Client and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 8.11 Waiver. No failure to enforce any condition or covenant of this Agreement by the Client shall imply or constitute a waiver of the right of the Client to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor shall any waiver by the Client of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.
- 8.12 Discrimination. In the performance of this Agreement, the parties agree that they shall not discriminate or permit discrimination against any person because of age, sex, marital status, race, religion, color, or national origin. Provider shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. Provider shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery. Provider agrees to comply with the provisions set forth in attached Appendix "A", including Provider's responsibility to incorporate the provisions in subcontracts, throughout the term of this Agreement.
- 8.13 Ownership of Information. Any drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, brochures, illustrations, copy, maps, graphics, slides, and documents prepared, assembled, drafted, or generated by the Provider in connection with this Agreement shall become the exclusive property of the Client. Provider may keep copies of such documents for its records. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by Provider, whether finished or unfinished, shall become the property of Client and shall be delivered by Provider to the BMPO Executive Director, as detailed in section 3.8(iv) of the Agreement and within thirty (30) days of termination of this Agreement by either party. Any compensation due to Provider shall be withheld until all documents are received as provided herein.

- 8.14 Successors and Assigns. This Agreement, and all the terms and provisions hereof, shall be binding upon and shall insure to the benefit of the Client and Provider, and their respective legal representatives, successors, and assigns.
- 8.15 No Third Party Beneficiaries: This Agreement and all of its provisions are solely for the benefit of Provider and the Client and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or utility.
- 8.16 Survival of Covenants: Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- 8.17 Taxes: Provider shall, without additional expense to the Client, be responsible for paying any taxes, obtaining any necessary licenses and for complying with all applicable federal, state, county, and municipal laws, ordinances and regulations in connection with the performance of the Services specified herein.
- 8.18 Contract Administrator. The Contract Administrator is responsible to coordinate and communicate with Provider and to manage and supervise the execution and completion of the Services and the terms and conditions of this Agreement as set forth herein. For purposes of this Agreement, Mr. Juan Canez, for the Client is designated as the Contract Administrator.
- 8.19 Public Entity Crime Act. Provider represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a Provider, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Client, may not submit a bid on a contract with Client for the construction or repair of a public building or public work, may not submit bids on leases of real property to Client, may not be awarded or perform work as a Provider, supplier, subcontractor, or consultant under a contract with Client, and may not transact any business with Client in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Client's competitive procurement activities. In addition to the foregoing, Provider further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.
- 8.20 Third Party Beneficiaries. Neither Provider nor Client intends to directly or substantially benefit a third party by entering into this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that

no third party shall be entitled to assert a claim against either of them. Based upon this Agreement the parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

- 8.21 Conflicts. Neither Provider nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Provider's loyal and conscientious exercise of judgment related to its performance under this Agreement.

Provider agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against Client in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Provider agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of Client in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude Provider or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event Provider is permitted to utilize subcontractors to perform any services required by this Agreement, Provider agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

- 8.22 Contingency Fee. Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Provider, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Client shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 8.23 Compliance with Laws. Provider shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

- 8.24 Drug-Free Workplace. Provider shall maintain a drug-free workplace.

- 8.25 Incorporation by Reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.

## **9. DISCLOSURE OF AGREEMENT; INTERLOCAL ARRANGEMENTS.**

- 9.1 Disclosure of Agreement Terms. The terms and conditions of this Agreement may be disclosed by either party to other public agencies for the purpose of such other

agencies purchasing services under this Agreement pursuant to an interlocal or cooperative arrangement with the Client. In addition, Provider may disclose the terms and conditions of this Agreement in an effort to show that the terms offered to another public agency are fair and reasonable or to determine the best value. It is understood that the Provider shall not be precluded from disclosing the terms and conditions of its form of Service Agreement to any other third party at Provider's sole discretion and for any reason.

9.2 Included Parties; Interlocal Agreement. Pursuant to any interlocal, intergovernmental, or other such cooperative agreement with the Client, Provider will accept orders from, and will furnish the Provider's Software, Hardware, Professional Services, and Managed Services as outlined in the Proposal to any governmental agency or other public entity authorized by the Client to use the Proposal, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules.

9.3 Political Subdivision Participation. The Provider agrees to supply, sell, and contract separately with other similar or related political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the Client, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules, in an effort to establish the terms and conditions as fair and reasonable.

## **10. PUBLIC RECORDS**

10.1 Provider understands that the public shall have access, at all reasonable times, to all documents and information pertaining to Client contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Client and the public to all documents subject to disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Client.

10.2 Provider agrees to maintain public records in Provider's possession or control in connection with Provider's performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Provider shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

10.3 Provider agrees to keep and maintain public records in Provider's possession or control in connection with Provider's performance under this Agreement. Provider additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Client.

- 10.4 Upon request from the Client’s custodian of public records, Provider shall provide the Client 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 10.5 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Client.
- 10.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Provider shall be delivered by Provider to the Client, at no cost to the Client, within thirty (30) days. All such records stored electronically by Provider shall be delivered to the Client as detailed in section 3.8(iv) of the Agreement. Once the public records have been delivered upon completion or termination of this Agreement, Client shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 10.7 Any compensation due to Provider shall be withheld until all records are received as provided herein.
- 10.8 Provider’s failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Client.

**Section 119.0701(2)(a), Florida Statutes**

**IF PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PROVIDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: David Clark**  
**Mailing address: Broward MPO**  
**100 West Cypress Creek Road, Suite 650**  
**Fort Lauderdale, Florida 33309**  
**Telephone number: (954) 876-0043**  
**Email: [clarkd@browardmpo.org](mailto:clarkd@browardmpo.org)**

**11. PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES**

- 11.1. Florida Statute § 215.4725: Provider certifies that the company is not participating in a boycott of Israel. Provider shall also certify that Provider is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. Provider must submit the certification that is attached to this Agreement. Submitting a false certification shall be deemed a material breach of contract. The Client shall provide notice, in writing, to the Provider of the Client’s determination concerning the false certification. The Provider shall have ninety (90)

days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Provider does not demonstrate that the Client's determination of false certification was made in error then the Client shall have the right to terminate the Agreement and seek civil remedies pursuant to Florida Statute § 215.4725.

- 11.2 Provider certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Provider or its subcontractors are found to have submitted a false certification; or if the Provider, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- 11.3 If this Agreement is for more than one million dollars, the Provider certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Client may immediately terminate this Agreement at its sole option if the Provider, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Provider, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- 11.4 The Provider agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- 11.5 As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

## **12. DISADVANTAGED BUSINESS ENTERPRISE**

- 12.1 The Provider, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of USDOT assisted contracts. Failure by the Provider to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- 12.2 The Provider agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Client. The Provider agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause

following written approval of the Client. This clause applies to both DBE and non-DBE subcontracts.

### **13. AUDIT AND INSPECTION RIGHTS**

- 13.1 The Client may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by Provider under this Agreement, audit, or cause to be audited, those books and records of Provider that are related to Provider's performance under this Agreement. Provider agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.
- 13.2 The Client may, at reasonable times during the term hereof, perform such inspections, as the Client deems reasonably necessary, to determine whether the services required to be provided by Provider under this Agreement conform to the terms of this Agreement. Provider shall make available to the Client all reasonable assistance to facilitate the performance of inspections by the Client's representatives.
- 13.3 In addition, Provider shall respond to the reasonable inquiries of successor contractors and allow successor contractors to receive working papers relating to matters of continuing significance.

### **14. DURATION**

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force for an initial term of three (3) years, unless sooner terminated as provided above. All pricing is to remain firm during the contract period and renewal terms. This Agreement will automatically renew for two (2) additional one-year terms (for a total combined five (5) year contract period) unless either party provides written notice of its intent to not renew the Agreement to the other party not less than sixty (60) days prior to the end of the then current term.

**AGREEMENT BETWEEN  
THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND  
INTENT DIGITAL, LLC, FOR BOARDROOM VOTING SYSTEM UPGRADE**

**Broward Metropolitan Planning  
Organization**

**Intent Digital, LLC**

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

\_\_\_\_\_  
Gregory Stuart, Executive Director

\_\_\_\_\_  
Todd Sharp, Member

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Date of Execution

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

By: \_\_\_\_\_  
Alan L. Gabriel, General Counsel  
Weiss Serota Helfman Cole & Bierman PL

**EXHIBIT A**  
**SCOPE OF WORK**  
**BOARDROOM VOTING SYSTEM UPGRADE**



**BUDGETARY QUOTE**

DATE: August 9, 2021  
 PAGE: 1 of 1  
 REFERENCE: Broward MPO  
 QUOTE # BG0892102

3104 E. Camelback Road  
 Suite 445  
 Phoenix, AZ 85016  
 Voice: 602-404-0100  
 Fax: 602-324-4629

Juan Canez  
 Broward MPO

**VoteLynx GUS Software System**

ITEM	QTY	MODEL	DESCRIPTION	SELL PRICE	
				UNIT	EXTEND
1	1	VL-XLG-52GS-UP	<b>VoteLynx XLG/GUS Meeting Management System Upgrade</b> <b>Includes:</b> * (52) VoteLynx Graphic User Stations (GUS). See GUS software description below. * Up to eight (8) Hours of Online Remote Training Sessions * Integrates with AgendaQuick software and Swagit Video Streaming as a unified system * One year software support. Additional yearly support available  <b>VoteLynx Graphic User Station (GUS) Software Description:</b> GUS software to be installed on end user provided computers to provide vote entry, member request to speak entry, motions, presentation timer and public speakers names. View agenda documents and document library. Includes live HD presentation via NDI video option.	\$91,094.00	\$91,094.00
2	1	KV-E2	<b>KiloView HDMI NDI Encoder</b>	\$435.00	\$435.00
3	1	NDI-1U	<b>Kiloview Rackmount</b>	\$144.00	\$144.00
4	1	VL-PSKRV	<b>VoteLynx Public Speaker Server:</b> Kiosk server module manages kiosk clients. Embedded controller with installed kiosk server software ready to mount in furniture or equipment provided by others. Includes standard office style keyboard and mouse, no display.	\$3,632.00	\$3,632.00
5	2	VL-PSKC-M	<b>VoteLynx Public Speaker Kiosk Module:</b> Kiosk client module allows public to register to speak at meeting. Consists embedded controller with VoteLynx kiosk client software preinstalled.	\$3,405.00	\$6,810.00
6	2	VL-PSKC-E	<b>VoteLynx Public Speaker Kiosk Enclosure:</b> Metal standup enclosure with 21.5" 16x9 touch monitor to house VoteLynx public speaker kiosk module.	\$4,200.00	\$8,400.00
7	1	VL-GSBRZ	<b>VoteLynx GUS Browser Option:</b> For member meeting participation from a remote location. Includes Gus Browser Server hardware and software and first year of subscription service. Some configuration by client's IT department will be required.	\$3,335.00	\$3,335.00
8	1	VL-GSBRZ-ST	<b>VoteLynx GUS Browser Support and Training:</b> First year of support and training for GUS Browser.	\$1,900.00	\$1,900.00
9	1	VL-GSBRZ-V	<b>VoteLynx GUS Browser Video Option:</b> Transmits meeting video to browser clients viewed by remote meeting participants. Includes first year license.	\$3,500.00	\$3,500.00
10	1	KVM-ML	<b>KVM Module:</b> Manages keyboard, video, and mouse functions for Zoom computer and Public Speaker Server	\$675.00	\$675.00
11	1	VDU-150	<b>VoteLynx VDU w/ mount</b>	\$1,750.00	\$1,750.00
<b>VoteLynx System Sub-Total</b>					<b>\$121,675.00</b>
12	1	VL-Configure	<b>Intent Digital Manufacturer Support Services:</b> Project Management and Remote testing of VoteLynx system operation. VoteLynx system ships pre-configured based on project design documentation and information supplied by user, design consultant or integrator. Pricing for Support Services is budgetary pending receipt of completed VoteLynx Deployment Document. Integrator or end user to install VoteLynx system GUS and kiosk equipment. Update system documentation and drawings to reflect changes to VoteLynx and AV system. Includes one site visit if mutually deemed necessary.	\$20,367.84	\$20,367.84
13	1	Shipping	<b>Estimated Shipping</b>		\$2,160.00
14	1	Discount	<b>System Discount</b>	(\$7,000.00)	(\$7,000.00)

**VoteLynx System Total w/Discount & Estimated Shipping**

**\$137,202.84**

<b>VoteLynx Support</b>				
15	4	<b>VL-SUPPORT</b>	<b>VoteLynx XLG Software Support:</b> One year renewable support package for VoteLynx XLG GUS systems includes email support, phone support and software upgrades. <b>Starts year two after initial support period and will be invoiced to the end user by Intent Digital.</b>	\$8,000.00    \$32,000.00
16	4	<b>VL-GSBRZ-S</b>	<b>GUS Browser and GUS Video Yearly Subscription:</b> Yearly fee starts year two and will be invoiced to end user by Intent Digital.	\$3,000.00    \$12,000.00
17	1	<b>Engineering</b>	Allocation for projects, updates and modifications to the system in order to further the goals and growing business operations of the MPO.	\$50,000.00    \$50,000.00

**VoteLynx Support Sub-Total**

**\$94,000.00**

**VoteLynx Upgrade Phase One Project Total**

**\$231,202.84**

**Notes:**

- 2) A purchase order is required. Please note the "TERMS" section of quote. ID will provide estimated delivery dates after a PO is received.
- 3) Intent Digital will provide a VoteLynx Deployment Document to the integrator or end user to be completed and returned to ID. The system will be configured and shipped based on information and network settings entered in this document. Any changes required to the system's configuration will result in additional invoicing to the integrator/end user.
- 4) Any delay in receipt of requested information from integrator or end user could delay system ship date. Any costs whatsoever resulting from the delay are the responsibility of the integrator and/or end user.
- 5) All equipment and related network systems to be installed by end user or integrator. Active Internet connection to system to be provided prior to remote software installation.
- 6) Integrator to coordinate with end user to provide artwork and graphics files for control any video display within requested time frame.
- 7) Quote is budgetary only and subject to change pending receipt of completed VoteLynx Configuration and Deployment Documents along with detailed Scope of Work document agreed to by all parties, and photos of dais and equipment areas. It is the responsibility of the Integrator or end user to determine and provide any additional required devices to interface the VoteLynx system to any new or existing systems.

SUBJECT TO LOCAL AND STATE TAXES WHERE APPLICABLE

<b>TERMS</b> TBD	<b>F.O.B.</b> MFG.	<b>DELIVERY</b> BEST WAY SURFACE	<b>Quote Valid for 30 Days</b>
---------------------	-----------------------	-------------------------------------	--------------------------------

**RESPECTFULLY SUBMITTED BY:** Bob Ginger

**ACCEPTED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMPANY:** \_\_\_\_\_



3104 E. Camelback Road  
 Suite 445  
 Phoenix, AZ 85016  
 Voice: 602-404-0100  
 Fax: 602-324-4629

**BUDGETARY QUOTE**

Juan Canez  
 Broward MPO

DATE: August 9, 2021  
 PAGE: 1 of 1  
 REFERENCE: Broward MPO  
 QUOTE # BG0092101

**VoteLynx GUS Controller Upgrade**

ITEM	QTY	MODEL	DESCRIPTION	SELL PRICE	
				UNIT	EXTEND
1	1	VL-XLG-52GS-UP	<b>VoteLynx XLG/GUS Meeting Management System GUS Controller Upgrade Includes:</b> * (52) VoteLynx Graphic User Stations (GUS). See description below. * Three year GUS computer warranty  <b>VoteLynx Graphic User Station (GUS) Description:</b> GUS Controller computer preconfigured with Windows 10 LTSC IOT Enterprise and VoteLynx GUS software to provide vote entry, member request to speak entry, motions, presentation timer and public speakers names. View agenda documents and document library. Includes live HD presentation via NDI video option. Computer is a Dell OptiPlex series MicroForm.	\$96,236.00	\$96,236.00
<i>VoteLynx System Sub-Total</i>					<b>\$96,236.00</b>
2	1	VL-Configure	<b>Intent Digital Manufacturer Support Services:</b> Remote testing of VoteLynx system operation. VoteLynx GUS stations ship pre-configured based on project design documentation and information supplied by user, design consultant or integrator. End user to install VoteLynx system GUS equipment. Includes one site visit if mutually deemed necessary.	\$6,533.00	\$6,533.00
3	1	Shipping	<b>Estimated Shipping</b> (May vary according to current shipping rates)		\$1,100.00
4	1	Discount	<b>System Discount</b>	(\$7,000.00)	(\$7,000.00)
<i>VoteLynx System Total w/Discount</i>					<b>\$96,869.00</b>

**Notes:**

- 1) A purchase order is required. Please note the "TERMS" section of quote. ID will provide estimated delivery dates after a PO is received.
- 2) Quote for equipment is budgetary only and subject to change pending pricing changes and product availability at time of purchase.

SUBJECT TO LOCAL AND STATE TAXES WHERE APPLICABLE

<b>TERMS</b>	<b>F.O.B.</b>	<b>DELIVERY</b>	<b>Quote Valid for 30 Days</b>
TBD	MFG.	BEST WAY SURFACE	

**RESPECTFULLY**

**SUBMITTED BY:** Bob Ginger

**ACCEPTED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMPANY:** \_\_\_\_\_

**AGREEMENT BETWEEN  
THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND  
INTENT DIGITAL, LLC, FOR BOARDROOM VOTING SYSTEM UPGRADE**

**Federal Contractual Provisions  
EXHIBIT “B-1”**

**FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS**

The applicable provisions in this Section shall be set forth in any Contract resulting from this Sole Source Agreement.

**1) Contract Provisions 2 C.F.R. §200. 326**

The Purchaser's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

**2) Remedies 2 C.F.R. Part 200, Appendix II, ¶ A**

*[Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.]*

**3) No Federal Government Obligations to Third Parties**

- a) Municipality and Consultant acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to the Agreement and shall not be subject to any obligations or liabilities to the Municipality, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.
- b) The Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-Contractor who will be subject to its provisions.

**4) False or Fraudulent Statements or Claims- Civil and Criminal Fraud. 31 U.S.C. Chap. 38**

- a) The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which work under this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) If the Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor shall include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA and each such clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**5) Access to Third Party Contract Records 49 CFR 18.39(i)(11).**

Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his/her authorized representatives including any Project Management Oversight (PMO) Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

**6) Changes to Federal Requirements 49 CFR Part 18**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract (the FTA Master Contract) between the FTA Recipient and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

**7) Termination for Cause and Convenience 2 C.F.R. Part 200, Appendix II, ¶ B**

*[All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement].*

**8) Civil Rights**

a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

i) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

- ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor shall comply with any implementing requirements FTA may issue.
- iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

## **9) Disadvantaged Business Enterprises (DBEs) 49 CFR Part 26**

- a) As a sub-recipient of FHWA (or FTA) funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that BMPO can likely achieve the overall aspirational goal of 10.65% (11.31% for FTA) without the use of contract goals. Nevertheless, BMPO is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>
- b) All bidders must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List . The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit

<https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at [ooohelp@dot.state.fl.us](mailto:ooohelp@dot.state.fl.us).

- c) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of the DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFP 26.13(b)).
- d) Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT/ FTA assisted contracts. The Contractor is required to report its DBE participation obtained through race- neutral means throughout the period of performance.
- e) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Purchaser. The Contractor must promptly notify the Purchaser, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Purchaser.

#### **10) Incorporation of FTA Terms FTA Circular 4220.1F**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the Municipality that would cause the FTA Recipient and/or the Purchaser or the Municipality to be in violation of the FTA terms and conditions.

#### **11) Debarment and Suspension 2 C.F.R. §200.213**

The Contractor certifies that neither it nor its “principals” [as defined at 49 CFR 29.995, or affiliates, [as defined at 49 CFR 29.905] are excluded or disqualified [as defined at 49 CFR 29.940 and CFR 29.945]. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

**12) Buy America 49 CFR Part 661**

The Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchase (currently less than \$100,000) made with capital, operating, or planning funds.

The Contractor shall submit with the Contract a completed Buy America certification form, Attachment 49 CFR 661.6, if applicable.

**13) Resolution of Disputes, Breaches, or Other Litigation**

*[All contracts in excess of \$100,000 shall contain provisions or conditions, which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.]*

**14) Byrd Anti-Lobbying Amendment. 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4**

- a) Contractor certifies that no federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of the Municipality, BMPO, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the Purchaser, the FTA Recipient, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee

of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

- c) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- d) The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A3801, et.seq., apply to this certifications and disclosure, if any.
- e) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000, and not more than \$100,000, for each such failure. See Attachment 49 CFR Part 20 Lobbying Certification.

**15) Clean Air Act 2 C.F.R. Part 200, Appendix II, ¶ G**

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall report each violation to the Purchaser and understands and agrees that the will, in turn, report each violation as required to assure notification to the FTA Recipient, FTA and the appropriate EPA Regional Office.

The Contractor shall also include these requirements in each subcontract exceeding \$100,000 financed in whole or part with federal assistance provided by FTA.

**16) Federal Water Pollution Control Act 2 C.F.R. Part 200, Appendix II, ¶ G**

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor shall report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the FTA Recipient, FTA and the appropriate EPA Regional Office.

The Contractor shall also include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**17) Fly America 49 U.S.C. 40118; 41 CFR Part 301-10**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients (such as BMPO) of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**18) Contract Work Hours and Safety Standards Act. 2 C.F.R. Part 200, Appendix II, ¶E**

- a) Overtime Requirements – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the base rate of pay for all hours worked in excess of forty hours in such workweek.
- b) Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c) Withholding for unpaid wages and liquidated damages – the FTA Recipient and/or the Purchaser shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards

Act, which is held by the prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

- d) Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**19) Transit Employee Protective Arrangements 29 CFR Part 215**

The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- a) General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 USC A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C §5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310 (a)(2),n and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. §5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of

certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. §5311 in Non-urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**20) Charter Service Operations 49 CFR Part 604**

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

**21) Alcohol and Drug Testing 49 CFR Part 655**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida or BMPO, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (*insert date*) and to submit the Management Information System (MIS) reports before (*insert date before March 15*) to (*insert title and address of person responsible for receiving information*). To certify compliance the contractor shall use the “Substance Abuse Certifications: in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

**22) Patent Rights; Rights in Data and Copyrights 37 C.F.R. Part 401 and 49 C.F.R. Part 18**

- a) Definition. The term “subject data,” as used in Section 18 of the Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Contract for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” do not include financial reports, cost analyses, or other similar information used for Project administration.
- b) General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Contract for the Project:
  - 1. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the prior written consent of the Federal Government and the BMPO, unless the Federal Government has previously released or approved the release of such data to the public.
  - 2. The restrictions on publication of Paragraph 18.b(1) of the Master Agreement, however, do not apply to a Grant Agreement or Contract with an institution of higher learning.
- c) Federal Rights in Data and Copyrights. The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in the Subsection 18.c of the Master Agreement. As used herein, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government’s license to:
  - 1. Any subject data developed under the Grant Agreement or Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Contract for the Project, whether or not a copyright has been obtained; and
  - 2. Any rights of copyright to which a Contractor, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.
- d) Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA’s purpose in providing Federal assistance for a research, development, demonstration, or special

studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Contractor of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the Master Agreement, FTA may make available to any FTA Contractor, subcontractor, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of the Master Agreement and shall be delivered as the Federal Government may direct. This does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use when the costs thereof are financed with Federal assistance through an FTA capital program.

- e) License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 et seq., which applies to patent rights developed under a research project.
- f) Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Contractor shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

**23) Energy Conservation 42 U.S.C. 6321 et seq.; 49 CFR Part 18**

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Florida Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**24) Recycled Products 42 U.S.C. 6962; 40 CFR Part 247; Executive Order 12873**

The Recycled Products requirements apply to all procurement actions involving items designated by the EPA in their “Comprehensive Procurement Guideline for Products Containing Recovered Materials”. The RCRA directs the procuring agency, for purchases over \$10,000 or more, to specify a competitive preference for products containing these recycled products. FTA has developed the following language:

Recovered Materials – The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**25) ADA Access**

49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

**26) Rights to Inventions Made Under a Contract or Agreement 2 C.F.R. Part 200, Appendix II, ¶ F**

- a) If the FTA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FTA. 2 C.F.R. Part 200, Appendix II, ¶ F.
- b) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

**27) Methods of Procurement to be Followed 2 C.F.R. § 200.320**

The Purchaser must use one of the following methods of procurement.

- a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the Purchaser must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Purchaser considers the price to be reasonable.
- b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid

method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

1. In order for sealed bidding to be feasible, the following conditions should be present:
    - (A) A complete, adequate, and realistic specification or purchase description is *available*;
    - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
    - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
  
  2. If sealed bids are used, the following requirements apply:
    - (A) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
    - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
    - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
    - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
    - (E) Any or all bids may be rejected if there is a sound documented reason.
- d) Procurement by competitive Offers. The technique of competitive Offers is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

Requests for Offers must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for Offers must be considered to the maximum extent practical;

1. Offers must be solicited from an adequate number of qualified sources;
2. The Purchaser must have a written method for conducting technical evaluations of the Offers received and for selecting recipients;
3. Contracts must be awarded to the responsible firm whose Offer is most advantageous to the program, with price and other factors considered; and
4. The Purchaser may use competitive Offer procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

e) [Reserved]

f) Procurement by noncompetitive Offers. Procurement by noncompetitive Offers is procurement through solicitation of an Offer from only one source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The FTA or FTA Recipient expressly authorizes noncompetitive Offers in response to a written request from the Purchaser; or
4. After solicitation of a number of sources, competition is determined inadequate.

**28) Procurement of Recovered Materials 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. §200.320; PDAT Supplement, Chapter V, ¶ 7**

a) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired -

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  2. Meeting contract performance requirements; or
  3. At a reasonable price.
- b) Information about this requirement, along with the list of EPA- designate items, is available through the EPA.

**29) Contract Cost and Price 2 C.F.R. §200.323**

- a) The Purchaser must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Purchaser must make independent estimates before receiving bids or Offers.
- b) The Purchaser must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Purchaser under Subpart E—Cost Principles of this part. The Purchaser may reference its own cost principles that comply with the Federal cost principles.
- d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

**30) Prompt Payment 49 CFR § 26.29**

- a) Purchaser requires that all subcontractors performing work on DOT/ FTA - assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.
- b) In accordance with 49 CFR § 26.29, the Purchaser established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than

30 days from the prime contractor's receipt of each payment from the Purchaser.

- c) Purchaser ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, Purchaser has selected the following method to comply with this requirement: *[Municipality selects one of the following options]*
  - i) The Purchaser may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
  - ii) The Purchaser may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
  - iii) The Purchaser may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

**31) Federal awarding agency or pass-through entity review 2 C.F.R. §200.324**

- a) The Purchaser and Contractor must make available, upon request of the FTA or FTA Recipient, technical specifications on proposed procurements where the FTA or FTA Recipient believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Purchaser desires to have the review accomplished after a solicitation has been developed, the FTA or FTA Recipient may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- b) The Purchaser must make available upon request, for the FTA or FTA Recipient pre-procurement review, procurement documents, such as requests for Offers or invitations for bids, or independent cost estimates, when:
  - i) The Purchaser's procurement procedures or operation fails to comply with the procurement standards in this part;

- ii) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - iii) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;
  - iv) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- c) The Purchaser is exempt from the pre-procurement review in paragraph (b) of this section if the FTA or FTA Recipient determines that its procurement systems comply with the standards of this part.
- i) The Purchaser may request that its procurement system be reviewed by the FTA or FTA Recipient to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
  - ii) The Purchaser may self-certify its procurement system. Such self-certification must not limit the FTA's right to survey the system. Under a self-certification procedure, the FTA may rely on written assurances from the Purchaser that it is complying with these standards. The Purchaser must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **32) Compliance with Federal Law Regulations, and Executive Orders**

This is an acknowledgement that FTA financial assistance will be used to fund the Contract only. The Contractor will comply will all applicable federal law, regulations, executive orders, FTA policies, procedures, and directives.

**AGREEMENT BETWEEN  
THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND  
INTENT DIGITAL, LLC, FOR BOARDROOM VOTING SYSTEM UPGRADE**

**Federal Contractual Provisions**

**EXHIBIT B-2**

**FEDERAL HIGHWAY ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS**

The resulting Contract will be funded, in whole or in part, with federal funds through the Federal Highway Administration (FHWA). Consequentially, the following FHWA and Federally- mandated provisions, as applicable, will be incorporated into the resulting Contract. Municipality and any subsequent Consultant(s) acknowledge and agree to comply with the applicable provisions in this Section. Italicized language indicates clauses, which require drafting specific to each agreement's needs.

**1) Contract Provisions 2 C.F.R. §200. 326**

The Purchaser's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

**2) Buy America Requirements 23 USC 313; 23 CFR 635.410**

The Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FHWA funded projects are produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchase (currently less than \$100,000) made with capital, operating, or planning funds.

**3) USDOT Disadvantaged Business Enterprise (DBE) Program Requirements  
49 CFR Part 26**

- a) As a sub-recipient of FHWA or FTA funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business Enterprise (DBE) Program. Currently, the approved FDOT program is 100% race neutral. This means that BMPO can likely achieve the overall aspirational goal of 10.65% (11.31% for FTA) without the use of contract goals. Nevertheless, BMPO is committed to providing contracting opportunities to DBEs and other small businesses. For assistance with identifying DBEs for work on this contract, contact the FDOT Equal Opportunity Office at 850-414-4750 or visit the DBE Supportive Service Providers page at <https://www.fdotdbesupportservices.com/>

- b) All bidders must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List . The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit <https://www.fdot.gov/equalopportunity/eoc.shtm> or contact the system administrator at [eoohelp@dot.state.fl.us](mailto:eoohelp@dot.state.fl.us).
- c) Bidders, contractors/consultants, sub-recipients, or subcontractor/consultants may not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The bidder contractor/subcontract, sub-recipient, or subcontractor/consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of FHWA and/or FTA-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deem appropriate.

**4) FHWA Non-Collusion Statement 23 USC 112(c); 23 CFR 635.112(f)**

EACH BIDDER SHALL FILE A STATEMENT EXECUTED BY, OR ON BEHALF OF THE PERSON, FIRM, ASSOCIATION, OR CORPORATION SUBMITTING THE BID CERTIFYING THAT SUCH PERSON, FIRM, ASSOCIATION, OR CORPORATION HAS NOT, EITHER DIRECTLY OR INDIRECTLY, ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION, IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THE SUBMITTED BID. FAILURE TO SUBMIT THE EXECUTED STATEMENT AS PART OF THE BIDDING DOCUMENTS WILL MAKE THE BID NONRESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION.

**5) Sanctions and Penalties for Breach of Contract 2 CFR Part 200, Appendix II(A)**

*[All contracts in excess of \$150,000 shall contain provisions or conditions which will address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.]*

**6) Termination for Cause and Convenience 2 C.F.R. Part 200, Appendix II, ¶ B**

*[All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement].*

**7) Rights to Inventions Made Under a Contract or Agreement 2 C.F.R. Part 200, Appendix II, ¶ F**

- a) If the FHWA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FHWA. 2 C.F.R. Part 200, Appendix II, ¶ F.
- b) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

**8) Energy Efficiency 42 USC 6201; 2 CFR Part 200 Appendix II (H)**

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Florida Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**9) Procurement of Recovered Materials 2 CFR Part 200 Appendix II (K), 2 CFR 200.322; 40 CFR Part 247**

- a) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired -
  - i) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii) Meeting contract performance requirements; or
  - iii) At a reasonable price.
- b) Information about this requirement, along with the list of EPA- designate items, is available through the EPA.

**AGREEMENT BETWEEN  
THE BROWARD METROPOLITAN PLANNING ORGANIZATION AND  
INTENT DIGITAL, LLC, FOR BOARDROOM VOTING SYSTEM UPGRADE**

**APPENDIX “A”  
(AS REFERENCED IN SECTION 8.12)**

**NONDISCRIMINATION REQUIREMENTS**

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, “USDOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Exhibit C of the Regulations.
- (3) **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.

- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (7) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of

Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)."