

AGREEMENT FOR SERVICES

This Interlocal Agreement for Services (the "Agreement") is entered into on this ____ day of _____, 2022 (the "Effective Date") by and between the **BROWARD METROPOLITAN PLANNING ORGANIZATION**, duly organized and existing under Section 339.175, Florida Statutes, (the "BMPO"), and the **METRO TRANSPORTATION ENGINEERING & CONSTRUCTION COOPERATIVE**, duly organized and existing under Section 163.1, Florida Statutes, ("MTECC") (collectively referred to as the "Parties").

Recitals

A. The MTECC Board recognizes the importance of leveraging the expertise and capabilities of the BMPO to ensure the mobility and economic development needs of its members and their respective residents, businesses, and tourists are met through efficient and effective investment in transportation infrastructure.

B. MTECC has determined that the assignment of certain defined administrative and transportation development responsibilities to the BMPO will provide MTECC with industry leading professional services and is the most efficient means to deliver these services.

C. The Parties desire to enter into an agreement containing mutually satisfactory terms regarding the BMPO's performance of the above-referenced activity.

D. The Parties enter into this Agreement on behalf of their respective entities after having made the following findings:

1. The employees of the BMPO ("BMPO Staff") and private contractors retained by the BMPO ("BMPO Consultants") have unique experience in the administration and use of federal and state transportation funding options for the development of transportation related projects.
2. The BMPO Staff and BMPO Consultants have unique administrative experience hosting public organizations consistent with federal and state requirements for public meetings, procurement, information technology, accounting, finance, and public meeting space.
3. The BMPO is a signatory to the Metro Transportation Engineering &

Construction Cooperative Interlocal Agreement among the BMPO and certain participating municipalities.

4. The BMPO's provision of transportation development and administrative services on behalf of MTECC will be outside the BMPO's federally funded responsibilities, and the BMPO should be compensated for such services by the MTECC.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. **Scope of Services.** The BMPO shall provide services related to the development and delivery of transportation projects to MTECC (the "Services"). The Services shall include:

- A. **Core Services.** The BMPO shall provide certain defined administrative services necessary for the ongoing operation of MTECC in relation to the furtherance of MTECC's development of transportation projects (collectively, the "Core Services") a complete list of which is attached hereto as Exhibit "A". The Core Services shall be provided for the Term of the Agreement. If this Agreement is renewed at the conclusion of the Term, the Core Services shall be deemed to be Optional Services (defined below) during a Renewal Term(s).
- B. **Optional Services –** The BMPO shall make available to MTECC certain services which MTECC may utilize on an as needed basis (the "Optional Services") a list of which are attached hereto as Exhibit "B". The BMPO shall provide the Optional Services to MTECC upon request and MTECC's issuance of a written task authorization with an adequate start-up period determined by BMPO. All task authorizations for Optional Services shall be subject to the terms of this Agreement. The BMPO shall retain the right to amend the scope of Optional Services at its sole discretion based on the availability of BMPO resources.
- C. **Authorization of Services Section –**MTECC shall request Optional Services in a written task authorization that provides, at a minimum, the scope of work to be provided by the BMPO, the time frame, estimate of cost, and source of funding. MTECC and BMPO shall work cooperatively to negotiate a written Optional Services task authorization acceptable to both Parties. The BMPO shall not provide Optional Services without a written task authorization.

D. **Provision of Services.** Nothing in this Agreement establishes the means and methods that the BMPO will utilize to deliver the Services. The BMPO may, in its sole and absolute discretion, utilize BMPO Consultants to perform all or a portion of the Services of this Agreement.

II. **Service Fees; Payment.** Payment for Services. MTECC shall pay for the cost of the Services rendered by BMPO Staff, and/or BMPO Consultants (the "Service Fee"). The Service Fee for BMPO Staff time shall be determined from uniquely recorded hours of MTECC effort on official timesheets times the combined then current actual hourly salary rate and employment benefits and administrative overhead as allocated in accordance with the OMB Circular A-133 as amended. The Service Fee for Services performed by BMPO Consultants shall be equal to the then current contracted rates. Any equipment procured by BMPO on behalf of MTECC shall be reimbursed at actual cost. The BMPO shall issue MTECC monthly invoices for the cost of all Services provided during the prior month. MTECC shall pay the BMPO all proper invoices within thirty (30) days of receipt.

III. **Term of Agreement.** This Agreement shall remain in full force for a period of five (5) years commencing on the Effective Date. This Agreement may be renewed for three (3) additional terms of five years (collectively the "Renewal Terms") upon the mutual written assent of the Parties.

IV. **Termination.** Either party may terminate this Agreement for its convenience effective on or after the expiration of the Initial Term by providing the other with written notice of termination at least 180-days prior to the effective date of the termination. This Agreement may also be terminated as otherwise mutually agreed to by the Parties.

V. **Amendment.** This Agreement may be amended by a written document formally approved by MTECC and the BMPO.

VI. **Indemnification.** To the fullest extent permitted by law, MTECC and the BMPO agree to indemnify and hold harmless each other, their respective officials, volunteers, employees and agents from any and all liability for any and all personal injury or loss of life, loss or damage to property, and any related costs including, but not limited to, reasonable attorneys' fees arising from the actions or omissions of the MTECC or BMPO, or their respective officials, volunteers, employees and agents, or their intentionally wrongful act or conduct in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

If the BMPO contracts with a third party to perform any Services set forth herein, BMPO agrees that any and all such contracts will include an indemnification of MTECC by the third party from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of the contractor, its officers, employees, agents, or service providers arising from, relating to, or in connection with this Agreement (collectively, a "Claim").

VII. **Sovereign Immunity.** Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the Parties nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement. The Parties are entities subject to Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their employees while acting within the scope of their office or employment pursuant to Section 768.28, Florida Statutes (2022, as may be amended or revised).

VIII. **Insurance.** Prior to the performance of any work under this Agreement, the BMPO provide MTECC's Point of Contact (POC) with written verification of insurance of the types and minimum amounts as set forth on the BMPO Certificate of Insurance, attached hereto as Exhibit "C" and in accordance with state law. Additionally, if the BMPO elects to purchase excess liability coverage, it will furnish a certificate of insurance to MTECC listing "Metro Transportation Engineering & Construction Cooperative" as a certificate holder and an additional insured.

If BMPO uses a BMPO Consultant to perform services set forth in this Agreement, BMPO agrees that any new contracts issued after the date of execution of this Agreement will include provisions that protect the BMPO and MTECC including the following:

- A. Insurance: BMPO Consultants shall keep and maintain, at their sole cost and expense, insurance of the types and minimum amounts as set forth in the BMPO Certificate of Insurance attached hereto as Exhibit "C", and specifically protect MTECC by naming "Metro Transportation Engineering & Construction Cooperative" and by naming the BMPO as an additional insured under the Commercial General Liability Insurance policy as well as any Excess Liability policy;
- B. BMPO Consultants shall furnish to MTECC / BMPO certificates of insurance and endorsements evidencing the insurance coverage specified above prior to beginning the performance of services under this Agreement; and

C. Coverage is not to cease and is to remain in full force and effect until all performance required of BMPO's contractor is complete.

IX. **Dispute Resolution.** If the Parties are unable to resolve an issue about which there may be a disagreement regarding a matter covered in this Agreement, the Parties agree to resolve the dispute in accordance with the governmental conflict procedures specified in Chapter 164, Florida Statutes, or such other process mutually agreed upon in writing by MTECC and the BMPO.

X. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement is litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, BMPO AND MTECC HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

XI. **Public Records.** Each party shall retain all records related to this Agreement and any Services provided hereunder in accordance with the State of Florida public records retention law and applicable Federal rules and regulations. Each party shall have access to such records, for the purposes of inspection and audit, until such time as the law allows said records to be destroyed.

XII. **Reporting, Audit, and Related Requirements:** MTECC shall have the right to audit the records and accounts of the BMPO and the BMPO's contractors that are related to the provision of Services under this Agreement. The BMPO shall keep, and the BMPO shall cause the BMPO's contractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of the BMPO and the BMPO's contractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, the BMPO or the BMPO's contractor, as applicable, shall make same available at no cost to MTECC in written form.

XIII. **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

XIV. **Notices.** In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section:

MTECC: MTECC
Attn: Executive Director
100 W. Cypress Creek Road
6th Floor, Suite 650
Fort Lauderdale, FL. 33309

BMPO: BMPO
Attn: Executive Director
100 W. Cypress Creek Road
6th Floor, Suite 650
Fort Lauderdale, FL. 33309
Current e-mail: stuartg@browardBMPO.org

XV. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any other agreement, representation, or communication, whether oral or written, between the Parties relating to the specific subject matter of this Agreement.

XVI. **Headings.** The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

XVII. **Joint Preparation.** This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

XVIII. **Severability.** In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

XIX. **Non-Discrimination.** The BMPO shall not, in any of its activities, including

employment, discriminate against any individual on the basis of race, color, national origin, age, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, marital status, or any other protected classification as defined by applicable law.

XX. **Survival of Terms.** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below shall survive the termination of this Agreement.

XXI. **Waiver.** No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

XXII. **Assignment.** The respective obligations of the Parties set forth in this Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

XXIII. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties.

XXIV. **Effective Date.** This Agreement shall become effective upon the execution by the Parties hereto.

XXV. **Joint Effort.** The preparation of this Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than another.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed the day and year as first stated below.

Attest:

Witness Name: _____

Witness Name: _____

**Broward Metropolitan Planning
Organization**

By: _____

Name: _____

Title: _____

Approved As To Form:

By: _____

Name: _____

Title: _____

Attest:

Witness Name: _____

Witness Name: _____

**Metro Transportation Engineering &
Construction Cooperative**

By: _____

Name: _____

Title: _____

___ day of _____, 20___

Approved As To Form:

By: _____

Name: _____

Title: _____

Exhibit A – Core Services

1. MTECC Board Support – sample services
 - a. Host MTECC Board meetings including preparation of meeting space, staffing for meeting, agenda preparation, public notice, preparation of minutes, etc. for about six meetings per year
 - b. Provide overall administrative services and staffing to review and support the activities of the interlocal agreements
 - c. Prepare draft organizational by-laws, procedures, public involvement, procurement, and other organizational support documents for adoption by MTECC Board.
 - d. Attend and participate in coordination meetings with MTECC, FDOT and member governments.
 - e. Serve as Custodian of MTECC Public Records
 - f. Public Outreach Services
 - g. Title VI; Disadvantaged Business Enterprise

2. Procurement Services – sample services
 - a. Procurement director and oversight.
 - b. Development of MTECC standard procurement documents, partner on project scope development and manage the procurement process
 - c. Assist in negotiations of professional services pricing for final agreements
 - d. Professional Contract Manager(s)
 - e. Issuance of Purchase Orders
 - f. Assist on approvals and reporting on procurement for the MTECC Board and Executive Director

3. Accounting and Banking Services – sample services
 - a. , including but not limited to bookkeeping, payroll, accounts payable, accounts receivable; monthly operating statements, grants, and general ledger.
 - b. Banking Services
 - c. Provide various financial accounting and recordkeeping services through staff and consultant resources to ensure the proper expenditure of funding related to the services provided through the interlocal agreements

4. Planning Services – sample services
 - a. Support project development
 - b. Public involvement activities
 - c. Assisting the MTECC Board in prioritizing projects for implementation and in the development and update of the multi-year project plan

5. IT services – sample services
 - a. MTECC web site
 - b. MTECC technology setup and maintenance
 - c. IT equipment

Exhibit B – Optional Services

1. MTECC Audit Services
2. Human Resource Services
3. MTECC Executive Director

Exhibit C – Insurances

