

July 13, 2017

William G. Benson, CPA  
KEEFE McCULLOUGH & CO., LLP  
6550 North Federal Highway, 4<sup>th</sup> Floor Suite 410  
Fort Lauderdale, Florida 33308

Subject: **Notice to Proceed/Execution – NEW AGREEMENT**  
Audit Services

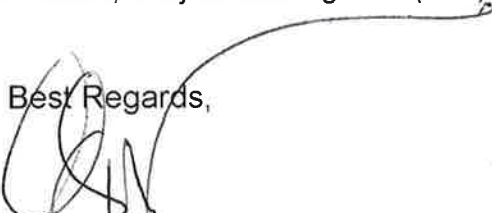
Dear Mr. Benson:

This letter serves as the official Notice to Proceed for the Audit Services project. Enclosed is a fully **executed agreement** dated July 13, 2017 between Keefe McCullough & Co., LLP and the Broward Metropolitan Planning Organization (BMPO) for your records.

We look forward to working with Keefe McCullough & Co., LLP as we move forward in accomplishing the goals of the Broward MPO.

If you have any questions please feel free to contact me or Tracy Mitchell Flavier, Project Manager at (954) 876-0039 or at [mitchellt@browardmpo.org](mailto:mitchellt@browardmpo.org).

Best Regards,

  
Gregory Stuart, AICP  
Executive Director, Broward MPO  
GS/lw

Enclosure

Cc: Tracy Mitchell Flavier  
Accounting & Finance

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**Executive Director**

Gregory Stuart

**General Counsel**

Alan Gabriel

**AGREEMENT  
BETWEEN THE  
BROWARD METROPOLITAN PLANNING ORGANIZATION  
AND  
KEEFE, McCULLOUGH & CO., LLP  
FOR  
AUDIT SERVICES  
RFP No. 17-02**

This Agreement ("Agreement") is made and entered into the 13<sup>th</sup> day of July, 2017, by and between the **Broward Metropolitan Planning Organization**, with its principal business address located at Trade Centre South, 100 West Cypress Creek Road, Suite 650, Fort Lauderdale, FL 33309, hereinafter referred to as ("BMPO"),

And

**Keefe, McCullough & Co., LLP**, a Florida limited liability partnership, with its principal business address located at 6550 North Federal Highway, Suite 410, Fort Lauderdale, FL 33308 (hereinafter referred to as "CONTRACTOR") to perform Audit Services for the BMPO (the "Project"). References in this Agreement to "Executive Director" shall be meant to include his/her designee.

WITNESSETH:

WHEREAS, the BMPO desires to retain qualified certified public accountants to provide auditing services as required for three (3) years beginning with Fiscal Year 16-17 and ending with Fiscal Year 18-19 (the BMPO fiscal year commences July 1, and ends June 30, of each year); and

WHEREAS, the BMPO, pursuant to its Procurement Rules, solicited Proposals from firms to provide the required expertise in connection with the Project; and

WHEREAS, Proposals were evaluated and ranked by an Evaluation and Selection Committee; and

WHEREAS, the Board of the BMPO has selected the CONTRACTOR, upon the recommendation of the Evaluation and Selection Committee, as the highest ranked firm to perform Audit Services in connection with the Project; and

WHEREAS, on July 13, 2017, the Board of the BMPO ratified the ranking of Proposals received in response to RFP No. 17-02 and authorized the appropriate BMPO officials to execute an agreement with the CONTRACTOR; and

WHEREAS, BMPO and CONTRACTOR desire to enter into an Agreement whereby the duties and obligations of each party to the other are set forth therein.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

## SECTION 1. SCOPE OF SERVICES

- 1.1 The CONTRACTOR must meet the requirements and perform the services identified in the Request for Proposals for the BMPO's Audit Services, RFP No. 17-02, dated March 30, 2017, ("RFP"), referenced hereto and made a part hereof, as Exhibit "A", and the CONTRACTOR'S Proposal, dated April 18, 2017, attached hereto and made a part hereof, as Exhibit "B"; and
- 1.2 The Federal Transit Administration ("FTA") Required Contractual Provisions (attached hereto as Exhibit "C-1"), and the Federal Highway Administration ("FHWA") Required Contractual Provisions (attached hereto as Exhibit "C-2), collectively hereafter referred to as the "Federal Contractual Provisions" are attached hereto and made a part hereof, collectively as Exhibit "C". **Prior to beginning the performance of any services under this Agreement, the CONTRACTOR will be provided with a Notice to Proceed from the BMPO.** This Notice to Proceed will specify the applicable Federal Contractual Provisions which will apply to this Agreement and the services to be provided accordingly.
- 1.3 The parties agree that the Services and the Federal Contractual Provisions, as specified in Exhibits "A", "B" and "C", (hereinafter collectively referred to as the "Scope of Services" or "Services") contain the description of Contractor's obligations and responsibilities and are deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.
- 1.4 CONTRACTOR agrees and acknowledges that CONTRACTOR is prohibited from exempting provisions of the Scope of Services and this Agreement in any of CONTRACTOR'S Services pursuant to this Agreement.

## SECTION 2. TERM

- 2.1 The term of this Agreement will be for a period of **Three (3) Years** (the "Term") which shall begin on the date it is fully executed by both parties and shall remain in effect until such a time as the Audit Services acquired in conjunction with the RFP have been completed and accepted by the BMPO in accordance with this Agreement and the terms of the Request for Proposals.
  - 2.1.1 The Services to be rendered begin with Fiscal Year 16-17 and end with Fiscal Year 18-19 as follows:
    - (i) July 1, 2016 and ending on June 30, 2017 ("FY 16-17");
    - (ii) July 1, 2017 and ending on June 30, 2018 ("FY 17-18"); and
    - (iii) July 1, 2018 and ending June 30, 2019 ("FY 18-19").
- 2.2 In addition, at the discretion of the BMPO, subject to the terms and conditions as set forth herein, the term of this Agreement may be extended, by the BMPO, annually for no more than two (2) additional fiscal years, at the same cost as specified in Section 3, below. To extend this Agreement for each additional fiscal year (the "Extended Terms"), the Executive Director shall submit written notice of the BMPO's election to the CONTRACTOR no later than March 31, of the BMPO's then current fiscal year.

2.2.1 The Services to be rendered during the Extended Terms begin with Fiscal Year 19-20 and end with Fiscal Year 20-21 as follows:

- (i) July 1, 2019 and ending on June 30, 2020 ("FY 19-20"); and
- (ii) July 1, 2020 and ending on June 30, 2021 ("FY 20-21").

2.3 **Prior to beginning the performance of any services under this Agreement, the CONTRACTOR must receive a Notice to Proceed.** CONTRACTOR shall perform the services describe in the Scope of Services within the time periods specified therein, **said time period shall commence from the date of the Notice to Proceed for such Services; however this Agreement shall terminate no later than August 31, 2022**, unless terminated earlier pursuant to Section 4 of this Agreement.

2.4 The BMPO through its Executive Director and the CONTRACTOR may further extend this Agreement by mutual consent, in writing, for no more than six (6) months, prior to the expiration of the then current term. This provision in no way limits either party's right to terminate this Agreement at any time during the initial term or any extension thereof, pursuant to Section 4 of the Agreement.

### SECTION 3. COMPENSATION

3.1 In consideration for the Scope of Services to be performed by CONTRACTOR pursuant this Agreement, the BMPO agrees to pay CONTRACTOR, (i) during the Term **Forty-Nine Thousand Five Hundred And No/100 Dollars (\$49,500.00)** plus (ii) **Thirty-Five Thousand Five Hundred And No/100 Dollars (\$35,500.00)** for the Extended Terms, if so extended, in the manner specified in the Scope of Services, the total amount not to exceed **EIGHTY-FIVE THOUSAND AND NO/100 Dollars (\$85,000.00)**. The amount of compensation payable by the BMPO to CONTRACTOR shall be based upon the amounts negotiated between the parties as indicated on attached Exhibit "B", which amount shall be accepted by CONTRACTOR as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by CONTRACTOR that these amounts are the maximum payable and constitute a limitation upon BMPO'S obligation to compensate CONTRACTOR for its Services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

3.2 CONTRACTOR may submit an invoice for compensation, developed and agreed upon by the BMPO Executive Director and CONTRACTOR, no more often than on a monthly 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.

3.3 BMPO shall pay CONTRACTOR in accordance with the Florida Prompt Payment Act. Additionally, payment may be withheld by the BMPO Executive Director for failure of CONTRACTOR to comply with a term, condition or requirement of this Agreement.

3.4 Notwithstanding any provision of this Agreement to the contrary, the BMPO Executive Director may withhold, in whole or in part, payment to the extent necessary to protect BMPO from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Executive Director. The amount withheld shall not be subject to payment of interest by BMPO.

**3.5** Payment shall be made to CONTRACTOR at:

Keefe McCullough & Co., LLP  
6550 North Federal Highway, Suite 410  
Fort Lauderdale, FL 33308

**3.6** CONTRACTOR 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 CONTRACTOR 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 BMPO.

**3.7** If it should become necessary for BMPO to request CONTRACTOR to render any additional services to either supplement the services described in the RFP or to perform additional work, such additional work shall be performed only if set forth in an addendum 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 CONTRACTOR's Fee Proposal, dated April 18, 2017, attached hereto as Exhibit "B-1".

#### **SECTION 4. TERMINATION**

**4.1** This Agreement may be terminated for cause by action of the BMPO Board if the CONTRACTOR is in breach and has not corrected the breach within thirty (30) days after written notice from the BMPO identifying the breach, or for convenience by action of the BMPO Board upon not less than sixty (60) days' written notice by the BMPO Executive Director.

**4.2** This Agreement may be terminated for cause by the CONTRACTOR if the BMPO is in breach and has not corrected the breach within sixty (60) days after written notice from the CONTRACTOR identifying the breach.

**4.3** Termination of this Agreement by the BMPO for cause shall include but not be limited to, failure to suitably perform the services, failure to continuously perform the services in a manner calculated to meet or accomplish the objectives of BMPO as set forth in this Agreement or multiple breaches of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.

**4.4** Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.

**4.5** In the event this Agreement is terminated for convenience, CONTRACTOR shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of BMPO's election to terminate, CONTRACTOR shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. CONTRACTOR acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by BMPO, the adequacy of which is hereby acknowledged by CONTRACTOR, is given as specific consideration to CONTRACTOR for BMPO's right to terminate this Agreement for convenience.

- 4.6 In the event this Agreement is terminated, any compensation payable by BMPO shall be withheld until all documents are provided to BMPO pursuant to Section 7.2 of this Agreement. In no event shall the BMPO be liable to CONTRACTOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

## SECTION 5. INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR hereby agrees to indemnify and hold harmless the BMPO, and its officials, employees and agents, from liabilities, damages, losses and costs including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the BMPO Executive Director and the BMPO Attorney, any sums due CONTRACTOR under this Agreement may be retained by BMPO until all of BMPO'S claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by BMPO.

## SECTION 6. INSURANCE

- 6.1 In order to insure the indemnification obligation contained above, CONTRACTOR shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages as set forth in the RFP (Exhibit "A"). This Agreement shall not be deemed approved until the CONTRACTOR has obtained all required insurance coverages and has supplied the BMPO with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The BMPO shall approve such certificates prior to the performance of any services pursuant to this Agreement.
- 6.2 CONTRACTOR shall make this same requirement binding on any of its subcontractors. CONTRACTOR shall indemnify and save the BMPO harmless from any damage resulting to them for failure of any subcontractor to take out or maintain such insurance.

## SECTION 7. MISCELLANEOUS

- 7.1 **Contract Administrator.** The Contract Administrator is responsible to coordinate and communicate with CONTRACTOR 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 the Agreement, Tracy Mitchell Flavien, Chief Financial Officer/Project Manager for the BMPO is designated as the Contract Administrator.
- 7.2 **Ownership of Documents.** Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of BMPO. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of BMPO and shall be delivered by CONTRACTOR to the BMPO Executive Director within seven (7) days of termination of this Agreement by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

- 7.3 Audit and Inspection Rights and Retention of Records.** BMPO shall have the right to audit the books, records and accounts of CONTRACTOR that are related to this Agreement. CONTRACTOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

CONTRACTOR shall preserve and make available, at reasonable times for examination and audit by BMPO, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless CONTRACTOR is notified in writing by BMPO of the need to extend the retention period. Such retention of such records and documents shall be at CONTRACTOR'S expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by BMPO to be applicable to CONTRACTOR'S records, CONTRACTOR shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for BMPO's disallowance and recovery of any payment upon such entry.

In addition, CONTRACTOR shall respond to the reasonable inquiries of successor Contractors and allow successor Contractors to receive working papers relating to matters of continuing significance.

In addition, CONTRACTOR shall provide a complete copy of all working papers to the BMPO, prior to final payment by the BMPO, in accordance with the RFP for CONTRACTOR services.

- 7.4 Policy of Non Discrimination.** CONTRACTOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. CONTRACTOR 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. CONTRACTOR agrees to comply with the provisions set forth in attached Appendix "A", including Contractor's responsibility to incorporate the provisions in subcontracts, throughout the term of this Agreement.

- 7.5 Public Entity Crime Act.** CONTRACTOR 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 contractor, 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 Proposal on a contract to provide any goods or services to BMPO, may not submit a Proposal on a contract with BMPO for the construction or repair of a public building or public work, may not submit Proposals on leases of real property to BMPO, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with BMPO, and may not transact any business with BMPO 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 BMPO'S competitive procurement activities. In addition to the foregoing, CONTRACTOR 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.

- 7.6 Independent Contractor.** CONTRACTOR is an independent contractor under this Agreement. Services provided by CONTRACTOR pursuant to this Agreement shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees or agents of the BMPO. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR. This Agreement shall not constitute or make the parties a partnership or joint venture.
- 7.7 Third Party Beneficiaries.** Neither CONTRACTOR nor BMPO 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.
- 7.8 Notices.** Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail postage prepaid return receipt requested or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

**BMPO:**

Gregory Stuart, Executive Director  
Broward Metropolitan Planning Organization  
100 West Cypress Creek Road, Suite 650  
Fort Lauderdale, Florida 33309

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

**CONTRACTOR:**

Keefe McCullough & Co., LLP  
6550 North Federal Highway, Suite 410  
Fort Lauderdale, Florida 33308

**7.9 Assignment and Performance.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by CONTRACTOR. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the BMPO, which shall be in BMPO's sole and absolute discretion. A list of all such subcontractors shall be included in the Proposal. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Proposal, a list of such subcontractors shall be provided to the BMPO, subject to BMPO's approval.

CONTRACTOR represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the RFP and to provide and perform such services to BMPO's satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations and services under this Agreement in a skillful and respectable manner.

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

CONTRACTOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against BMPO in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, CONTRACTOR 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 BMPO in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude CONTRACTOR or any other persons from representing themselves in any action or in any administrative or legal proceeding.

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

**7.11 Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, 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 CONTRACTOR, 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, BMPO 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.

- 7.12 Materiality and Waiver of Breach.** BMPO and CONTRACTOR agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. BMPO's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 7.13 Compliance with Laws.** CONTRACTOR 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.
- 7.14 Severance.** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless BMPO or CONTRACTOR elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 7.15 Joint Preparation.** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.16 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Sections 1 through 7 of this Agreement shall prevail and be given effect.
- 7.17 Applicable Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 7.18 Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement.
- 7.19 Prior Agreements.** This Agreement and its attachments constitute the entire agreement between CONTRACTOR and BMPO, and this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless set forth in writing in accordance with Section 7.18 above.

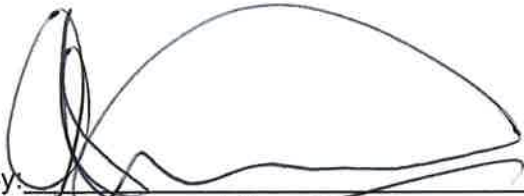
- 7.20 Drug-Free Workplace.** CONTRACTOR shall maintain a drug-free workplace.
- 7.21 Incorporation by Reference.** The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated hereto and made a part of this Agreement.
- 7.22 Multiple Originals.** This Agreement may be fully executed in three (3) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 7.23 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 7.24 Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 7.25 Public Records.** CONTRACTOR understands that the public shall have access, at all reasonable times, to all documents and information pertaining to BMPO contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the BMPO and the public to all documents subject to disclosures under applicable law. CONTRACTOR'S failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the BMPO.
- 7.26 Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 7.27 Truth-in-Negotiation Certificate.** Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.
- 7.28 Disadvantage Business Enterprise (DBE) Program.** The contractor, sub-recipient, or subcontractor 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 FTA-assisted contracts. Failure by the contractor 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.

The prime contractor 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 BMPO. The prime contractor 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 BMPO. This clause applies to both DBE and non-DBE subcontracts.

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

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

**BMPO**

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


BROWARD METROPOLITAN PLANNING  
ORGANIZATION

By:   
\_\_\_\_\_  
Richard Blattner, Chair

This 13<sup>th</sup> day of July 2017.

This 13<sup>th</sup> day of July 2017.

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

By:   
\_\_\_\_\_  
Alan L. Gabriel, BMPO General Counsel  
Weiss Serota Helfman Cole & Bierman, P.L.  
(FNL 6.21.17)

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**CONTRACTOR**

WITNESSES:

By: Amber Theiter

Print Name: Amber Theiter

By: Kaitlin Chuback

Print Name: Kaitlin Chuback

KEEFE McCULLOUGH & CO., LLP,  
a Florida limited liability partnership

By: William Benson

Print Name: WILLIAM BENSON

Title: PARTNER

This day 21<sup>ST</sup> of JUNE, 2017.

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**EXHIBITS LIST**

- 1) **Exhibit "A"** – RFP No. 17-02, Date Issued: March 30, 2017.  
A copy of the Scope of Services are attached, a full copy of this document is available for review upon request at the BMPO's Offices.
  
- 2) **Exhibit "B"** – CONTRACTOR's Proposal, dated May 25, 2017 .  
**Exhibit "B-1"** -- CONTRACTOR's Fee Proposal, dated April 18, 2017 (As Referenced in Paragraph 3.7 of the Agreement)
  
- 3) **Exhibit "C"** – Federal Contractual Provisions  
**Exhibit "C-1"** -- Federal Transit Administration Required Contractual Provisions  
**Exhibit "C-2"** -- Federal Highway Administration Required Contractual Provisions
  
- 4) **Appendix "A"** – BMPO Policy of Non Discrimination

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**EXHIBIT "A", SCOPE OF SERVICES  
AUDIT SERVICES**

**RFP No. 17-02**

**Date Issued: March 30, 2017**

**A COPY OF THE SCOPE OF SERVICES IS ATTACHED HERETO. A FULL COPY OF RFP  
No. 17-02 IS AVAILABE FOR REVIEW AND INSPECTION UPON REQUEST AT THE BMPO  
OFFICE**

# EXHIBIT “A”

## SCOPE OF SERVICES

### 1. INTRODUCTION

The BROWARD METROPOLITAN PLANNING ORGANIZATION (the “BMPO”) is requesting bids from qualified certified public accountants, to provide auditing services for a three (3) year term beginning with Fiscal Year 16-17 and ending with Fiscal Year 18-19 as follows:

- (i) Commencing on July 1, 2016 and ending on June 30, 2017 (“FY 16-17”);
- (ii) Commencing on July 1, 2017 and ending on June 30, 2018 (“FY 17-18”), and
- (iii) Commencing on July 1, 2018 and ending on June 30, 2019 (“FY 18-19”).

The audits must be performed in accordance with the following publications, as they may be amended from time to time:

- Generally Accepted Auditing Standards
- Government Auditing Standards issued by the U.S. General Accounting Office (GAO)
- Pronouncements issued by the Government Accounting Standards Board
- Provisions of the Federal Single Audit Act of 1996
- Office of Management and Budget (OMB) Circular A-133
- Office of Management and Budget (OMB) 2 CFR Chapter I, Chapter II, Part 200, et al.
- The Rules of the Auditor General, State of Florida, Chapter 10.550, 10.650
- Sections 218.39 and 215.97, Florida Statutes, and other Florida Statutes, as applicable
- 49 CFR 18.26
- Rules of the Florida Department of Financial Services
- Chapter 6 of the MPO Program Management Handbook, published by FDOT

### 2. SCOPE OF SERVICES

The scope of work to be performed includes the annual audit of the BMPO general purpose financial statements (for the fiscal years specified above) to express an opinion on the fair presentation of its basic financial statements in conformity with the accounting principles generally accepted in the United States of America and the financial reporting requirement of Governmental Accounting Standards Board Statement No. 34, “Basic Financial Statements – and Management’s Discussion and Analysis for State and Local Governments.” All major grant programs must be audited at the fund level.

Each audit shall be performed in accordance with all applicable state and Federal auditing requirements and applicable law, as such may be amended from time to time. The Successful Bidder shall prepare and submit to the BMPO all reports required by applicable laws to support the Successful Bidder’s Audit.

The Successful Bidder shall be responsible for performing certain limited procedures involving required Management's Discussion and Analysis and the required supplementary information required by the Governmental Accounting Standards Board (GASB) as mandated by generally accepted auditing standards.

The Successful Bidder shall audit the schedule(s) of Federal and State financial assistance.

The Successful Bidder shall provide all opinions required by the Auditor General and State, Federal, and local grantors associated with the annual financial report and as necessary for grant compliance.

The Successful Bidder shall be required to make an immediate written report of all irregularities and illegal acts or indications of illegal acts of which they become aware of, to the BMPO's Executive Director.

The Successful Bidder shall make an oral presentation to the BMPO Board concerning the Audit final report for each fiscal year of the Contract.

### **REPORTS TO BE ISSUED ("REPORTS")**

1. A report on the fair presentation of the basic financial statements as a whole, in conformity with accounting principles generally accepted in the U.S.
2. A report on the internal control structure based on the Successful Bidder's understanding of the control structure and assessment of control risk.
3. A report on compliance with laws and regulations.
4. The Annual Financial Report which shall include the Successful Bidder's opinions as to their findings of the BMPO's general purpose financial statements as may be required by applicable laws to support the Successful Bidder's Audit.
5. A "management letter" required by Section 218.39(4), Florida Statutes.
6. Reports required by the Single Audit Act of 1996 and OMB Circular A133 to include:
  - a. An "in-relation-to" report on the schedule of expenditures of Federal and State financial assistance.
  - b. An opinion on the financial statements and on the supplementary schedule of expenditures of Federal awards and State financial assistance.
  - c. A report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with Government Auditing Standards.
  - d. A report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133.
  - e. A schedule of findings and questioned costs.
  - f. A report on compliance with requirements applicable to State grants-in-aid appropriations.
  - g. For any irregularities and illegal acts, the Successful Bidder shall be required to make an immediate written report of all irregularities and illegal acts of which they become aware to the Chief Financial Officer, Deputy Director, Executive Director and Board Chair, as appropriate.

7. Other reports and schedules that may be necessary to satisfy the grant requirements or amendments to accounting rules, or applicable state or federal auditing requirements and applicable law, as such may be amended from time to time. Any such revisions, amendments to accounting rules or applicable state or federal auditing requirements or applicable law shall not result in additional cost(s) to the BMPO.

Use of the audited financial statements, opinions or any of the above named reports shall not result in additional compensation unless their use requires additional certification or extraordinary services on the part of the Successful Bidder. Prior to requesting additional compensation for any matter, the Successful Bidder shall submit a written request to the BMPO which specifically outlines the justification for such a request and secure written authorization to proceed with the work. Failure to attain prior written approval from the BMPO will be justifiable basis for the BMPO's denial of the request, which denial shall not relieve the Successful Bidder's responsibility to successfully and timely complete the subject work.

8. The Successful Bidder shall submit a signed audit report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America no later than the first Friday in November, for the previous fiscal year ending June 30, along with the required reports on internal control structure and compliance with laws and regulations, and any written or oral communications required to the governing Board.
9. The Successful Bidder may be requested to perform other auditing and financial related services at the discretion of the BMPO. Any such additional work requested by the BMPO shall be performed by the Successful Bidder at the hourly rates provided by the Successful Bidder in the Fee Proposal Form.

### **3. STAFF ASSISTANCE AND REPORT PREPARATION**

The BMPO Accounting staff and responsible management personnel will be available during the audit to assist the Successful Bidder by providing information, documentation and reasonable explanations. The Successful Bidder shall be required to prepare the financial statements and notes. The BMPO staff will prepare the supporting documents and schedules, with the Successful Bidder's assistance. .These supporting documents and schedules include but are not limited to:

- Physical Inventory,
- Fixed Assets,
- Schedules Bank and Investment Confirmations,
- Revenue Confirmations,
- Tyler EDEN generated reports,
- Accrued Payroll,
- Receivables Schedule,
- Prepaid Expenses Subsidiary Schedule,
- Accounts Payable Subsidiary Schedule,
- Bank Reconciliations,
- Schedule of Expenditures of Federal Awards and State of Florida Financial
- Assistance, and
- MD&A.

The Successful Bidder shall be responsible for the preparation, editing, printing, and distribution of the Reports required under the Scope of Services.

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**EXHIBIT "B"  
CONTRACTOR'S PROPOSAL**

May 25, 2017

Members of the Board of Directors  
Broward Metropolitan Planning Organization  
Trade Center South  
100 West Cypress Creek Road, Suite 650  
Ft. Lauderdale, FL 33309

Dear Board Members:

We are pleased to confirm our understanding of the services we are to provide the Broward Metropolitan Planning Organization (the "Organization") for the years ending September 30, 2017, 2018, and 2019, with an option to perform these services for two additional years. We will audit the financial statements of the governmental activities and each major fund, including the related notes to the financial statements, which collectively comprise the basic financial statements, of the Organization as of and for the years ending September 30, 2017, 2018 and 2019, with an option to perform these services for two additional years. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the Organization's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Organization's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis.

We have also been engaged to report on supplementary information other than RSI that accompanies the Organization's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

1. Schedule of Expenditures of Federal Awards.

## Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on-

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The Government Auditing Standards report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our single audit. Our reports will be addressed to the Board of Directors. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements or the single audit compliance opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

### **Audit Procedures-General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a single audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

### **Audit Procedures-Internal Control**

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

### **Audit Procedures-Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Organization's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the OMB Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of the Organization's major programs. The purpose of these procedures will be to express an opinion on the Organization's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

### **Other Services**

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of the Organization in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

## **Management Responsibilities**

Management is responsible for (1) designing, implementing and maintaining effective internal controls, including internal controls over federal awards, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards, take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings, promptly follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a separate corrective action plan.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported, on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

### **Engagement Administration, Fees, and Other**

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the Federal Audit Clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will provide copies of our reports to the Organization; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Keefe McCullough and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Auditor General or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Keefe McCullough personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the agencies listed above. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Our fees for the services described in this letter are as follows:

2017	\$	16,000
2018	\$	16,500
2019	\$	17,000

Option Years:

2020	\$	17,500
2021	\$	18,000

Our fees are based upon the anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimated before we incur the additional costs. This agreement may be renewed each year based on the mutual agreement to all terms, including fees, of both parties. An invoice for the services provided will be presented at the completion of the engagement or at the end of each semi-monthly billing period, whichever occurs first. Payment of our invoice is due when rendered.

Broward Metropolitan Planning Organization -8-

May 25, 2017

We appreciate the opportunity to be of service to the Broward Metropolitan Planning Organization and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

KEEFE McCULLOUGH

Marc A. Grace, C.P.A.

RESPONSE:

This letter correctly sets forth the understanding of the Broward Metropolitan Planning Organization.

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Signature

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Title

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Date

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**EXHIBIT "B-1"  
CONTRACTOR's Fee Proposal**

April 18, 2017

Ms. Lydia Waring, Procurement Officer  
And Members of the Audit Selection Committee  
Broward Metropolitan Planning Organization  
Trade Centre South  
100 West Cypress Creek Road, #650  
Ft. Lauderdale, FL 33309

Dear Ms. Waring and Audit Selection Committee members:

Our fee for services rendered will be based upon the difficulty of your engagement and the time and skill level of our personnel assigned. Work is assigned, according to its complexity, to the appropriate member of our staff.

We anticipate our fee for the audit of the basic financial statements for the years ended June 30 to be as follows:

2017	\$	16,000
2018	\$	16,500
2019	\$	17,000

Option Years:

2020	\$	17,500
2021	\$	18,000

Our firm commits to these "total all-inclusive maximum fees" for each of the audit years. These total fees include all direct and indirect costs, including all out-of-pocket expenses.

Below is our firm's standard billing rates by staff level, which have remained consistent over the past three years. These rates would apply for any additional services requested and approved by the Broward Metropolitan Planning Organization.

Partners	\$ 230
Managers	\$ 140
Supervisory Staff	\$ 120
Senior Accountant	\$ 100
Staff	\$ 80

We hereby attest to our authority to submit this proposal and to individually bind Keefe McCullough to perform this audit in accordance with the resulting contract agreement should the firm be selected. This proposal is a firm and irrevocable offer for one hundred and twenty (120) days as of the date of this proposal.

We are excited about the opportunity to serve as your independent auditing firm. Please feel free to contact me directly if you require additional information.

Regards,

KEEFE McCULLOUGH

William G. Benson, C.P.A.

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**Federal Contractual Provisions**

**EXHIBIT "C-1"**

**FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS**

The applicable provisions in this Section shall be set forth in any Contract resulting from this RFP. By submitting a Proposal, Proposers acknowledge and agree to comply with the applicable provisions in this Section in the event they are awarded the Contract.

**1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.**

In connection with the Project, the Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subcontractor, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subcontract, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Contractor, including any subcontractor, lessee, third party contractor, or other participant at any tier of the Project.

**2. FEDERAL LAWS, REGULATIONS, AND DIRECTIVES.**

The Contractor agrees that Federal laws and regulations control Project award and implementation. The Contractor also agrees that Federal directives, as defined in the Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Contractor understands and agrees that unless the Contractor requests FTA approval in writing, the Contractor may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or the Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Contractor understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Contractor on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal FTA laws, regulations, and directives may become effective after the date on which the Contractor executes this Agreement for the Project, and might apply to this Agreement. Contractor agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Contractor signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Agreement. To accommodate changing Federal requirements, the Contractor agrees to

include in each agreement with each subcontractor, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in this Agreement for the Project, and in the Master Agreement are minimum requirements, unless modified by FTA.

### **3. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.**

Contractor acknowledges and agrees that:

(1) Civil Fraud. 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 the Contractor's activities in connection with the Project. By executing Contract for the Project, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Contractor the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Contractor makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government or the BMPO in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

### **4. CIVIL RIGHTS.**

The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

B. Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Contractors," and any other applicable Federal directives that may be issued.

C. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in

writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. 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, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

D. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Contractor agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Contractor agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Contractor agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Contractor agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Contractor's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Contractor of the Contractor's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

E. Nondiscrimination on the Basis of Sex. The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

F. Nondiscrimination on the Basis of Age. The Contractor agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

G. Access for Individuals with Disabilities. The Contractor agrees to comply with 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 Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Contractor agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

I. Access to Services for Persons with Limited English Proficiency. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Contractors' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

J. Environmental Justice. The Contractor agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Laws. The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

## **5. FEDERAL STANDARDS.**

The Contractor agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Contractor also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," except to the extent FTA determines otherwise in writing. The Contractor agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Contractor understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts.

## **6. ACCESS TO THIRD PARTY CONTRACT RECORDS.**

The Contractor agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Contractor further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

## **7. RIGHT OF THE FEDERAL GOVERNMENT TO TERMINATE.**

Upon written notice, the Contractor agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Contractor has violated the terms of the Grant Agreement or Contract for the Project including the Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing

the Project would not be adequately served by the continuation of Federal assistance for the Project. The Contractor understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Contract for the Project, or the Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Contractor before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Contractor has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Contract for the Project including the Master Agreement, the Federal Government reserves the right to require the Contractor to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

#### **8. DEBARMENT AND SUSPENSION.**

The Contractor agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB), "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. To the extent required by these U.S. DOT regulations and U.S. OMB guidance, the Contractor agrees to review the "Excluded Parties Listing System" at <http://epls.gov/> and to include a similar term or condition in each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor, lessee, third party contractor, and other participant at a lower tier of the Project, will review the "Excluded Parties Listing System" at <http://epls.gov/>, and will include a similar term or condition in each of its lower tier covered transactions.

#### **9. BUY AMERICA REQUIREMENTS**

The Successful Proposer is hereby notified that this project is funded with federal funds from the FTA. Therefore, this project shall comply with the Buy America regulations published at 49 CFR Part 661. The Contractor shall comply with 49 U.S.C. §5323(j) and FTA regulations, "Buy America Requirements," 49 CFR Part 661, and any amendments thereto in performing the Services requested in this RFP. If applicable, the Buy America certification forms shall be completed, signed, notarized and returned to the BMPO prior to Contract award.

#### **10. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION.**

The Contractor agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

A. Notification to FTA. The Contractor agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Contractor seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Contractor agrees to inform FTA in writing before doing so. At a minimum, each notice to FTA under Section 56 of the Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Contractor operates its public transportation system or implements the Project.

B. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Contractor may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

C. Enforcement. The Contractor agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

D. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Contractor.

E. Alternative Dispute Resolution. FTA encourages the Contractor to use alternative dispute resolution procedures, as may be appropriate.

## **11. LOBBYING RESTRICTIONS.**

The Contractor agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Contract;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subcontractor, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended.

## **12. CLEAN AIR.**

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Contractor agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The Contractor further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Contractor agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

(3) The Contractor agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

## **13. CLEAN WATER.**

Except to the extent the Federal Government determines otherwise in writing, the Contractor agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

- (1) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
- (2) The Contractor agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

#### **14. RIGHTS IN DATA AND COPYRIGHTS.**

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.

G. Restrictions on Access to Patent Rights. Nothing in Section 18 of the Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

H. Data Developed Without Federal Funding or Support. In connection with the Project, the Contractor may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of the Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Contractor understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

I. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Contractor understands and agrees that the data and information it submits to the BMPO or Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**Federal Contractual Provisions**

**EXHIBIT C-2**

**FEDERAL HIGHWAY ADMINISTRATION (“FHWA”)  
REQUIRED  
CONTRACTUAL PROVISIONS**

The following terms apply to all contracts in which services involve the expenditure of federal funds:

A. It is understood and agreed that all rights of the BMPO relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.

B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.

C. Compliance with Regulations: The Consultant shall comply with the Regulations of the U.S. Department of Transportation 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.

D. Nondiscrimination: The Consultant, 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 material and leases of equipment. The Consultant will 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 Appendix B of the Regulations.

E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant'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.

F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the BMPO, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the BMPO, 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.

G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the BMPO shall impose such contract sanctions as

it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Consultant under the contract until the Consultant complies and/or

2. cancellation, termination or suspension of the contract, in whole or in part.

H. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the BMPO, 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the BMPO to enter into such litigation to protect the interests of the BMPO, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

I. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.

J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.

K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.

The Consultant, subrecipient or subcontractor 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 DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.

L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.

M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the BMPO. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.

N. The BMPO hereby certifies that neither the consultant nor the consultant's representative has been required by the BMPO, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The BMPO further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The Consultant hereby certifies that it has not:

- 1 employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
- 2 agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
- 3 paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

**AGREEMENT BETWEEN THE BMPO  
AND KEEFE McCULLOUGH & CO., LLP, FOR AUDIT SERVICES**

**APPENDIX "A"  
(AS REFERENCED IN PARAGRAPH 7.3)**

**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 sub-contractor 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.