Broward MPO
Metropolitan Planning Organization
Move People & Goods | Create Jobs | Strengthen Communities

March 10, 2022

Wade White, CEO
WHITEHOUSE GROUP INC.
100 West Cypress Creek Road, Suite 620
Fort Lauderdale, Florida 33309

Subject: **Execution – NEW AGREEMENT**
Advancing Strategic Initiatives – RFP No. 22-02

Dear Mr. White:

Congratulations. Enclosed is a fully executed agreement between Whitehouse Group and the Broward Metropolitan Planning Organization (BMPO) for the Advancing Strategic Initiatives project.

Please note that this letter **does not** serve as a Notice to Proceed (NTP). A NTP will be issued by the BMPO Contract Administrator at a later date. At such time services shall commence upon issuance of a written NTP. We look forward to working with Whitehouse Group as we move forward in accomplishing the goals of the Broward MPO.

If you have any questions please feel free to contact me or Renee Cross, Contract Administrator/Project Manager, (954) 876-0075 or by email at crossr@browardmpo.org.

Best regards,

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

Enclosure:
Cc: Renee Cross
Accounting & Finance

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Frank C. Ortis

Vice Chair
Patricia Good

Deputy Vice Chair
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Judy Paul
Debra Placko
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Beverly Williams
Ana M. Ziade

Executive Director
Gregory Stuart

General Counsel
Alan Gabriel

AGREEMENT

BETWEEN THE

BROWARD METROPOLITAN PLANNING ORGANIZATION

AND

WHITEHOUSE GROUP, INC.

FOR

Advancing Strategic Initiatives

RFP No. 22-02

This Agreement ("Agreement") is made and entered into the 10TH day of MARCH, 2022, 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

Whitehouse Group, Inc., a Florida corporation, with its principal business address located at 100 West Cypress Creek Road, Suite 620, Fort Lauderdale, FL 33309, (hereinafter referred to as "CONTRACTOR") for Advancing Strategic Initiatives (the "Project"). References in this Agreement to "Executive Director" shall be meant to include his/her designee.

WITNESSETH:

WHEREAS, the BMPO, pursuant to Section 287.055, Florida Statutes, solicited offers from firms to provide the required expertise in connection with the Project; and

WHEREAS, Offers were evaluated 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 to perform Services in connection with the Project; and

WHEREAS, on MARCH 10, 2022, the Board of the BMPO ratified the evaluation and recommendation of Offers received in response to RFP No. 22-02 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 Advancing Strategic Initiatives, RFP No. 22-02, Dated January 11, 2022, ("RFP"), referenced hereto and made a part hereof, as Exhibit "A", and the CONTRACTOR'S Offer, Dated February 8,2022, 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 Services acquired in conjunction with this RFP have been completed and accepted by the BMPO in

accordance with this Agreement and the terms of the Request For Proposals. After the initial Term, the BMPO shall have the option to extend the Term, at its discretion, for two (2) one year extensions. To exercise one or both annual extension(s), the BMPO, through its Executive Director, shall notify CONTRACTOR, in writing, at least 90 days, prior to the expiration of the then current term.

2.2 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 periods shall commence from the date of the Notice to Proceed for such Services; **however this Agreement shall terminate no later than March 31, 2027 ,** unless terminated earlier pursuant to Section 4 of this Agreement.

2.3 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, in the manner specified in the Scope of Services, the total amount not to exceed TWO MILLION AND NO/100 Dollars ($2,000,000.00), contingent upon the appropriation of funds. The BMPO shall request consultant services on an as-needed basis. There is no guarantee that any or all of the services described in Exhibit "A" will be assigned during the term of this Agreement. The BMPO may, at its option, elect to have any or all of these specified services. 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.

3.1.1 Prior to beginning the performance of any services under this Agreement, the BMPO and the CONTRACTOR shall define specific services to be performed and deliverables for these services and sign separate task work orders. Each work order will specify a scope of work, time schedule and the compensation for those specific services. Once signed by both parties each work order and a Notice to Proceed will function as the authorization for the CONTRACTOR to compete the services and deliverables. CONTRACTOR shall perform the services described in the Scope of Services and each work order within the time periods specified therein, said time periods shall commence from the date of the Notice to Proceed for such 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:

Whitehouse Group, Inc.
100 West Cypress Creek Road, Suite 620
Fort Lauderdale, FL 33309

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 amendment to this Agreement. Any such additional work agreed to by both parties shall be performed at the same rate in the schedule of fees included in Exhibit "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 7.1 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.

Nothing herein is intended to serve as a waiver of sovereign immunity by the BMPO nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The BMPO is subject to section 768.28, Florida Statutes, as may be amended from time to time.

The provisions of this section shall survive termination of this Agreement.

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, Renee Cross , 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; Public Records.

7.3.1 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.

7.3.2 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.

7.3.3 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.

7.3.4 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.

7.3.5 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.

Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Vilma Hurtado
Mailing Address: 100 West Cypress Creek Road, Suite 650
Fort Lauderdale, FL 33309
Telephone Number: (954) 876-0057
Email: hurtadov@browardmpo.org

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 bid on a contract to provide any goods or services to BMPO, may not submit a bid on a contract with BMPO for the construction or repair of a public building or public work, may not submit bids 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:

Todd A. Brauer, President/COO
Whitehouse Group, Inc.
100 W. Cypress Creek Rd, Suite 620
Fort Lauderdale, Florida 33309

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 Offer. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Offer, 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 Articles 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 TWO (2) 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 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.

7.26 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.

7.27 Disadvantage Business Enterprise (DBE) Program.

7.27.1 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 USDOT 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 deems appropriate.

7.27.2 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.

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

The contractor must also immediately and regularly enter DBE commitments and payments into FDOT Equal Opportunity Compliance (EOC) system. For information on accessing EOC, visit https://www.fdot.gov/equalopportunity/eoc.shtm or contact the system administrator at eoohelp@dot.state.fl.us.

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 authorized representative, attested to and duly authorized to execute same.

BMPO

BROWARD METROPOLITAN PLANNING ORGANIZATION

By: _____
Gregory Stuart, Executive Director

This 10th day of MARCH 2022.

By: _____
~~Frank C. Ortis, Chair~~
PATRICIA GOOD, VICE CHAIR

This 10TH day of MARCH 2022.

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

By: Alan L. Gabriel
Alan L. Gabriel, BMPO General Counsel
Weiss Serota Helfman Cole & Bierman, P.L.

CONTRACTOR

WITNESSES:

By: _____

Print Name: KATHRINA REGNIER

By: _____

Print Name: Thomas Brandenstein

WHITEHOUSE GROUP, INC.,
a Florida corporation

By: _____

Print Name: Todd A. Brauer
Title: President / COO

This day 8 of March, 2022.

AGREEMENT FOR
ADVANCING STRATEGIC INITIATIVES
BETWEEN
BROWARD METROPOLITAN PLANNING ORGANIZATION
And
WHITEHOUSE GROUP, INC.

EXHIBITS LIST

1) **Exhibit "A"** – RFP No. 22-02, Date Issued: January 11, 2022
A full copy of this document is available for review upon request at the BMPO's Offices.

2) **Exhibit "B"** – CONTRACTOR's Offer/Offer, Dated February 8, 2022.

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 FOR
ADVANCING STRATEGIC INITIATIVES
BETWEEN
BROWARD METROPOLITAN PLANNING ORGANIZATION
And
WHITEHOUSE GROUP, INC.

EXHIBIT "A"

Advancing Strategic Initiatives
RFP No. 22-02

Date Issued: January 11, 2022

A FULL COPY OF RFP No. 22-02 IS AVAILABE FOR REVIEW AND INSPECTION UPON REQUEST AT THE BMPO OFFICE.

AGREEMENT FOR
ADVANCING STRATEGIC INITIATIVES
BETWEEN
BROWARD METROPOLITAN PLANNING ORGANIZATION
And
WHITEHOUSE GROUP, INC.

EXHIBIT "B"
CONTRACTOR'S OFFER

SECTION 2: SPECIFIC TERMS AND CONDITIONS

2-1 OVERVIEW

The Broward Metropolitan Planning Organization (BMPO) will retain a consultant for one (1) Indefinite Delivery Indefinite Quantity (IDIQ) contract for services that will advance the strategic initiatives developed by the BMPO Board as documented within the Strategic Business Plan (adopted June 11, 2020). The contract will be for a period of three (3) years with two (2) one-year extensions, with deliverables assigned on an as-needed basis. The maximum amount of the contract will not exceed $2,000,000.

The BMPO and consultant will together define deliverables and execute their completion through mutually agreed upon separate task work orders, which will include a scope of work, schedule and not to exceed compensation amount (lump-sum).

For pricing, the Offeror shall complete the attached Price Proposal Form (SECTION 18), identifying all persons and costs to be charged to the BMPO for those persons respective services. Pricing for each Task Work Order will be based on the rates in the Offeror's Price Proposal Form in the Successful Offeror's response.

Once signed by both parties, each task work order, together with a notice to proceed, will function as the authorization to commence and complete the agreed deliverables. A fully executed work order and subsequent notice to proceed will be required prior to any work being performed.

Scope of Services

Services provided by the consultant may encompass a wide range of transportation planning services with the possibility of several different types of deliverables with short completion schedules being assigned concurrently. Examples of the services may include but are not limited to:

- Audit the BMPO current plans, programs and structure to identify limitations in implementation and compliance; develop ongoing strategies to collect, collate and analyze data needed to address technical constraints; and implement expedited procedures to improve the BMPO's current plans, programs and structure and set a framework for the successful development of future products.
- Develop policies, procedures, and programs that will assist the BMPO in carrying out all elements of the Strategic Business Plan.
- Develop and implement educational programs designed to improve the operational capabilities of the BMPO and strengthen the BMPO Board's decision-making capacity.
- Support the BMPO in the development of new planning initiatives and leadership opportunities such as freight, economic growth, and the expansion of new technologies, to increase the awareness of the vision, mission, and products of the BMPO.

- Support the BMPO in greater regional and statewide collaborative efforts including, but not limited to, the South East Florida Transportation Council (SEFTC) and Metropolitan Planning Organization Advisory Council (MPOAC), to strengthen and expand the BMPO's strategic partnerships.
- Support the BMPO in the identification of opportunities and reduce barriers to advancing new services and products to increase the relevance of the BMPO.

Responsibilities of the BMPO

The BMPO will be responsible for the following:

- The BMPO will provide a Project Manager who will be responsible for the day-to-day management of the contract, all issued task work orders, and processing consultant invoices for payment. The BMPO Project Manager will coordinate with the consultant's Project Manager on the preparation and execution of all task work orders.
- The BMPO will provide the consultant, prior to the execution of any task work order, a draft scope of work, including an itemized list of deliverables, a completion schedule, and total allowable cost for each.
- The BMPO will provide the consultant with suggested revisions and comments on all deliverables within 15 working days from the date that draft deliverables are received from the consultant.
- The BMPO will coordinate any public outreach efforts and public comments required to complete any deliverable.

Responsibilities of the Consultant

The consultant will be responsible for the following:

- The consultant will provide a Project Manager who will be the primary point of contact for the BMPO Project Manager. The consultant's Project Manager will assist the BMPO's Project Manager in the preparation of each task work order. The consultant's Project Manager will meet with the BMPO's Project Manager on a regular basis and provide progress reports by task work order on a monthly basis or as needed.
- The consultant will provide the BMPO with an electronic copy of all draft deliverables for BMPO staff review within the required time schedule as specified in the task work orders and in accordance with all applicable federal and state laws, regulations, rules, procedures, and policies.
- The consultant will review and check all draft deliverables for accuracy, quality and consistency prior to review by BMPO staff as well as other relevant BMPO planning partners.
- The consultant will revise draft deliverables to reflect agreed-upon revisions and comments provided by BMPO staff within 15 working days of the date that the edits are approved to by both consultant and BMPO staff.
- The consultant will provide the BMPO all final deliverables in the formats and in the quantities as documented within each task work order.

Special Comments

The services identified within the "Scope of Services" section are an outline of general activities that can be expected to be performed under the IDIQ contract. A more specific and deliverable-based scope of work will be provided within each individual work order issued pursuant to the Agreement. The BMPO shall request consultant services on an as-needed basis. There is no guarantee that any or all of the services described in the Scope of Services will be assigned during the term of the Agreement. The BMPO may, at its sole option, elect to have any or none of the services assigned.

ADVANCING STRATEGIC INITIATIVES
TASK WORK ORDER (TWO) No. 01
Strategic Business Plan Update

Scope of Work
The Broward MPO (BMPO) has the need for a Task Work Order to support BMPO staff updating the Strategic Business Plan as documented within the current UPWP. This RFP has been issued for the purpose of selecting a consultant to act as an "on-call" contractor to perform the type and scope of work listed below as requested by the BMPO, from time to time.

The following work steps, organized by task, outline the scope of services and identify the participants' roles and responsibilities.

Task 1: Board Outreach

- **The Consultant** will schedule and conduct one-on-one interviews with Board members to identify evolving, emerging, local issues that impact transportation choices and performance, identifying those best addressed at a regional level. **The BMPO Project Manager** will support the Consultant in organizing the individual interviews' dates, times, and locations. **The Consultant** will develop and submit for the BMPO Project Manager's review a list of potential questions and a guidebook for conducting the interviews. **The BMPO Project Manager** will provide the Consultant any recommended changes. **The Consultant** will finalize and submit to BMPO Project Manager the final questions and guidebook addressing the recommendations. **The Consultant** will conduct the interviews, document responses, and provide the BMPO Project Manager a summary of each discussion.
- **The Consultant** will conduct an online survey of Board members to prioritize new planning initiatives that align with the BMPO's vision and mission and consider those evolving, emerging issues impacting the regional transportation system. **The Consultant** will develop and submit instructions and a list of survey questions for the BMPO Project Manager's review. **The BMPO Project Manager** will provide the Consultant any recommended changes. The Consultant will address the recommendations, develop an online survey, and submit it to the BMPO Project Manager for distribution to the Board. **The BMPO Project Manager** will transmit the survey instrument to Board members and provide periodic reminders. **The**

Consultant will provide the BMPO Project Manager a summary of survey results two weeks after its publication.

- **The Consultant** will organize, facilitate, and participate in a Board Engagement Forum. The outcome of the Forum should be a consensus describing the efforts necessary to incorporate new initiatives into the BMPO workflow and a production schedule. **The BMPO Project Manager** will provide the Consultant with a list of available dates and times for the meeting, a physical location or virtual meeting space, and invite attendees. **The Consultant** will provide the BMPO Project Manager meeting minutes and a summary of the following steps needed to achieve the direction provided by the Board at the Engagement Forum.
- For the BMPO's Project Manager's review, **the Consultant** will develop and submit a draft *Board Engagement Report* that documents the analysis and evaluation of the one-on-one Board member interviews, the results of the Board survey, and the direction provided by the Board at the Engagement Forum. **The BMPO Project Manager** will provide the Consultant any recommended changes. **The Consultant** will finalize and submit to BMPO Project Manager the *Board Engagement Report* addressing the recommendations.

Task 2: Plans and Programs Audit

- **The Consultant** will conduct one-on-one interviews with BMPO Executive Management Staff to identify the challenges and opportunities in implementing the new planning initiatives into the BMPO products as directed by the Board. **The BMPO Project Manager** will support the Consultant in organizing the individual interviews' dates, times, and locations. **The Consultant** will develop and submit for the BMPO Project Manager's review a list of potential questions and a guidebook for conducting the interviews. **The BMPO Project Manager** will provide the Consultant any recommended changes. **The Consultant** will finalize and submit to BMPO Project Manager the final questions and guidebook addressing the recommendations. **The Consultant** will conduct the interviews, document responses, and provide the BMPO Project Manager a summary of each discussion.
- **The Consultant** will develop and submit, for the BMPO's Project Manager's review, a draft *BMPO Plans and Programs Audit Report* that documents the analysis and evaluation of the one-on-one BMPO Executive Management Staff interviews and a decision-making structure. It will provide step-by-step instructions and a list of activities needed by BMPO staff to implement the new planning initiatives. **The BMPO Project Manager** will provide the Consultant any recommended changes. **The Consultant** will finalize and submit to BMPO Project Manager the *BMPO Plans and Programs Audit Report* addressing the recommendations.

Task 3: Strategic Business Plan Update

- **The Consultant** will develop and submit, for the BMPO's Project Manager's review, a draft *BMPO Strategic Business Plan* that documents an updated adaptive and achievement framework to implement the new planning initiatives. **The BMPO Project Manager** will provide the Consultant any recommended changes. **The Consultant** will finalize and submit to BMPO Project Manager the *BMPO Strategic Business Plan* addressing the recommendations.

- **The Consultant** will develop and submit, for the BMPO's Project Manager's review, a draft *BMPO Strategic Business Plan Presentation*. **The BMPO Project Manager** will provide the Consultant any recommended changes. **The Consultant** will finalize and submit to BMPO Project Manager the *BMPO Strategic Business Plan Presentation* addressing the recommendations.

Deliverables:

- *Task 1: BMPO Board Engagement Report* (electronic copies in native and Adobe formats) containing an analysis and evaluation of the results of the one-on-one Board member interviews and the Board survey and the direction provided by the Board at the Engagement Forum. This Task deliverable will be due two (2) months from the Notice to Proceed.
- *Task 2: BMPO Plans and Programs Audit Report* (electronic copies in native and Adobe formats) containing an analysis and evaluation of the results of the one-on-one interviews with BMPO Executive Management Staff members and a decision-making structure to address the challenges and opportunities identified by staff in implementing the new planning initiatives. This Task deliverable will be due four (4) months from the Notice to Proceed.
- *Task 3: BMPO Strategic Business Plan Report* (electronic copies in native and Adobe formats) containing an updated adaptive achievement framework. This Task deliverable will be due five (5) months from the Notice to Proceed.
- *Task 4: BMPO Strategic Business Plan Presentation* (electronic copies in native PowerPoint format) containing an overview of the process, a summary of findings, and an introduction to the updated adaptive achievement framework. This Task deliverable will be due six (6) months from the Notice to Proceed.

Schedule

Total duration of this Strategic Initiative Task Work Order Scope of Work will be completed no later than eight (8) months from the Notice to Proceed.

SECTION 18: PRICE PROPOSAL FORM

Offerors are to include hourly rates for all classifications of employees that will be working on this contract. Examples of classifications may include descriptions such as Principal, Project Manager, Support Staff, Graphics/IT, etc.

Pursuant to Section 2-1, pricing for each Task Work Order will be negotiated based on the rates provided on this form in the Successful Offeror's response.

The RFP total price evaluation will be based on the Offeror's firm fixed price amount for providing all Work under Task Work Order (TWO) No. 1, utilizing the rates of proposed personnel provided on this form.

Whitehouse Group						
Classification	Principal	Senior Planner	Associate Planner	Specialist	Admin	**Task Hours Total**
Hourly Rate	**$282.12**	**$125.11**	**$84.04**	**$106.97**	**$100.40**	
Task 1 Hours	40 hrs	8 hrs	0 hrs	0 hrs	24 hrs	72 hrs
Task 2 Hours	24 hrs	40 hrs	80 hrs	8 hrs	0 hrs	152 hrs
Task 3 Hours	16 hrs	24 hrs	40 hrs	24 hrs	0 hrs	104 hrs
Total Hours	**80 hrs**	**72 hrs**	**120 hrs**	**32 hrs**	**24 hrs**	**328 hrs**
Subtotal Fee	$22,569.60	$9,007.92	$10,084.80	$3,423.04	$2,402.40	
Total Fee						$47,487.76

Rockland Planning					
Classification	Principal	Project Manager	Senior Planner	Planner	**Task Hours Total**
Hourly Rate	**$190.34**	**$178.45**	**$166.55**	**$47.59**	
Task 1 Hours	0 hrs	24 hrs	0 hrs	0 hrs	24 hrs
Task 2 Hours	0 hrs	16 hrs	0 hrs	0 hrs	16 hrs
Task 3 Hours	0 hrs	40 hrs	0 hrs	0 hrs	40 hrs
Total Hours	**0 hrs**	**80 hrs**	**0 hrs**	**0 hrs**	**80 hrs**
Subtotal Fee	$0.00	$14,276.00	$0.00	$0.00	
Total Fee					$14,276.00

Media Relations Group (MRG)					
Classification	Principal	Senior PIO	Senior Designer	Designer	**Task Hours Total**
Hourly Rate	**$294.19**	**$113.88**	**$83.93**	**$58.84**	
Task 1 Hours	16 hrs	0 hrs	16 hrs	8 hrs	40 hrs
Task 2 Hours	16 hrs	0 hrs	0 hrs	0 hrs	16 hrs
Task 3 Hours	24 hrs	0 hrs	40 hrs	40 hrs	104 hrs
Total Hours	**56 hrs**	**0 hrs**	**56 hrs**	**48 hrs**	**160 hrs**
Subtotal Fee	$16,474.64	$0.00	$4,700.08	$2,824.32	
Total Fee					$23,999.04

Wordsworth Communication		
Classification	Principal	**Task Hours Total**
Hourly Rate	**$104.28**	
Task 1 Hours	8 hrs	8 hrs
Task 2 Hours	16 hrs	16 hrs
Task 3 Hours	24 hrs	24 hrs
Total Hours	**48 hrs**	**48 hrs**
Subtotal Fee	$5,005.44	
Total Fee		$5,005.44

Local Public Agency Solutions			
Classification	Principal	Project Manager	**Task Hours Total**
Hourly Rate	**$140.00**	**$125.00**	
Task 1 Hours	0 hrs	0 hrs	0 hrs
Task 2 Hours	0 hrs	0 hrs	0 hrs
Task 3 Hours	0 hrs	0 hrs	0 hrs
Total Hours	**0 hrs**	**0 hrs**	**0 hrs**
Subtotal Fee	**$0.00**	**$0.00**	
Total Fee			$0.00

Patel, Greene and Associates (PGA)				
Classification	Senior Planner	Outreach Specialist	Graphic Designer	**Task Hours Total**
Hourly Rate	**$186.73**	**$137.75**	**$84.18**	
Task 1 Hours	0 hrs	0 hrs	0 hrs	0 hrs
Task 2 Hours	0 hrs	0 hrs	0 hrs	0 hrs
Task 3 Hours	0 hrs	0 hrs	0 hrs	0 hrs
Total Hours	**0 hrs**	**0 hrs**	**0 hrs**	**0 hrs**
Subtotal Fee	**$0.00**	**$0.00**	**$0.00**	
Total Fee				$0.00

Insight Transportation Consultanting			
Classification	Transit Expert	Data Expert	**Task Hours Total**
Hourly Rate	**$293.37**	**$241.54**	
Task 1 Hours	0 hrs	0 hrs	0 hrs
Task 2 Hours	0 hrs	0 hrs	0 hrs
Task 3 Hours	0 hrs	0 hrs	0 hrs
Total Hours	**0 hrs**	**0 hrs**	**0 hrs**
Subtotal Fee	**$0.00**	**$0.00**	
Total Fee			$0.00

Add additional sheets if necessary.

TOTAL FIRM FIXED PRICE AMOUNT
(PRIME CONSULTANT TOTAL FEE + ALL SUBCONSULTANTS TOTAL FEES):

$90,768.24

Type/Write Dollar Amount Above

AGREEMENT FOR
ADVANCING STRATEGIC INITIATIVES
BETWEEN
BROWARD METROPOLITAN PLANNING ORGANIZATION
And
WHITEHOUSE GROUP, INC.

Federal Contractual Provisions

EXHIBIT C-1

FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS

UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT)

Federal Transit Administration (FTA)

EXHIBIT C-1

FUNDING SUPPLEMENT

FEDERALLY FUNDED
FORMAL PROCUREMENTS (>$150,000)

10/28/2021 Rev. 1

Broward MPO
Metropolitan Planning Organization
Move People & Goods | Create Jobs | Strengthen Communities

Broward Metropolitan Planning Organization
(BMPO)
TRADE CENTER SOUTH
100 WEST CYPRESS CREEK ROAD, SUITE 650
FORT LAUDERDALE, FL 33309

APPLICABLE PROVISIONS & CERTIFICATION FORMS

PROVISIONS

☒ = Applicable to this solicitation and/or purchase

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Reserved

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Provisions 1 through 7 apply to ALL CONTRACTS

1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

A. BMPO and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to BMPO, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

B. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - CIVIL AND CRIMINAL FRAUD

A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution or performance of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.

C. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

A. For a period of three years following Contract closing, the Contractor shall maintain, preserve and make available to BMPO, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives, access at all reasonable times, to any books, documents, papers and records of Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his or her authorized representatives, including any project management oversight contractor, access to Contractor's records and sites pertaining to a major

capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

B. The Contractor shall maintain and BMPO shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs or rates negotiated and invoiced in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's offices engaged in performing the Contract.

C. If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three years after any resulting final termination settlement. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.

D. "Access to Records and Reports" applies with equal force and effect to any subcontractors hired by the Contractor to perform Work under this Contract. The Contractor shall insert this provision in all subcontracts under this Contract and require subcontractor compliance therewith.

4. CHANGES TO FEDERAL REQUIREMENTS

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

5. CIVIL RIGHTS (TITLE VI, ADA, EEO)

The following requirements apply to the underlying Contract:

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

B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying Contract:

1. Race, Color, Creed, National Origin, Sex- In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. Contractor agrees to take affirmative action to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities- In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

C. Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs. The national goal for participation of DBEs is 10%.

B. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. 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 BMPO deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The Contractor is required to pay its subcontractors performing Work related to this Contract for satisfactory performance of that Work no later than 30 days after the Contractor's receipt of payment for that Work from BMPO. In addition, the Contractor shall return any retainage payments to subcontractors within 30 days after incremental acceptance of the subcontractor's Work by BMPO and Contractor's receipt of the partial retainage payment related to the subcontractor's Work.

D. The Contractor must promptly notify BMPO, whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of Work. The contractor may not terminate any DBE subcontractor and perform that Work through its own forces or those of an affiliate without prior written consent of BMPO.

E. BMPO sets an annual overall goal for the participation of DBEs. This Contract contains a minimum level of DBE participation, and is awarded in reliance upon the Contractor's representations that it can attain such DBE participation levels in addition to all other of Contractor's representations, certifications and submittals as required by this Contract.

The Contractor shall cooperate with BMPO with regard to maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontract work under this Contract. The Contractor shall assist BMPO in verifying compliance with the DBE requirements of this Contract, if any, by submitting status reports itemizing payments to all DBE subcontractors with each monthly request for payment. Upon Contract completion, the Contractor shall submit a summary of payments, by subcontract, made to all subcontractors to BMPO's Administrative Compliance Officer.

7. INCORPORATION OF FTA TERMS

The provisions of this Contract include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any BMPO requests which would cause BMPO to be in violation of the FTA terms and conditions. The incorporation of FTA terms has unlimited flow down.

Provision 8 applies to AWARDS EXCEEDING $10,000

8. TERMINATION

Refer to BMPO's Agreement provisions.

Provision 9 applies to AWARDS EXCEEDING $25,000

9. DEBARMENT AND SUSPENSION

A. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;

b) Suspended from participation in any federally assisted Award;

c) Proposed for debarment from participation in any federally assisted Award;

d) Declared ineligible to participate in any federally assisted Award;

e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in ay federally assisted Award.

B. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

1. The certification in this clause is a material representation of fact relied upon by BMPO. If it is later determined by BMPO that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to BMPO, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

2. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Provisions 10 through 11 apply to AWARDS EXCEEDING THE SIMPLIFTED ACQUISTION THRESHOLD ($150,000)

10. BUY AMERICA

(For, Rolling Stock, Construction and Materials/Supplies)

The Buy America requirements apply to all contracts for construction, the acquisition of goods, or the acquisition of rolling stock that are valued at more than $150,000.

The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

11. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

Refer to BMPO's General Terms and Conditions.

Provisions 12 through 14 apply to AWARDS EXCEEDING $150,000 BY STATUTE

12. LOBBYING

Contractors and all subcontractors who apply or bid for an award of $150,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not use and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of

Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to BMPO. Contractor should contact BMPO for the appropriate certification or retrieve a copy from the FTA Best Practices Manual at http://www.fta.dot.gov/library/admin/BPPM/.

13. CLEAN AIR

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

B. Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

14. CLEAN WATER

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

B. Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

Provisions 15 and 16 apply to the TRANSPORT OF PROPERTY OR PERSONS

15. CARGO PREFERENCE
(For, Rolling Stock, Construction and Materials/Supplies)

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

The Contractor agrees:

1. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

2. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding

paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to BMPO (through the Contractor in the case of a subcontractor's bill-of-lading);

3. to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. FLY AMERICA

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

Provisions 17 through 22 apply to CONSTRUCTION ACTIVITIES

17. VETERANS EMPLOYMENT. As provided by 49 U.S.C. § 5325(k):
(All Construction Awards)

A. To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

B. Contractor also assures that its subcontractors:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

18. FTA - CONSTRUCTION EMPLOYEE PROTECTIONS – DAVIS–BACON ACT
(Awards that exceed $2,000)

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be

paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an

authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The BMPO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the BMPO may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the BMPO for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and

Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland "Anti-Kickback" Act requirements - The contractor shall comply with the requirements of Section 1 of the Act, as amended, 18 U.S.C. § 874; Section 2 of the Act, as amended, 18 U.S.C. § 3145; and U.S. DOL regulations "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

19. CONSTRUCTION EMPLOYEE PROTECTIONS – CONTRACT WORK HOURS & SAFETY STANDARDS ACT

(For Construction Contracts that exceed $150,000)

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The BMPO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

20. CONSTRUCTION EMPLOYEE PROTECTIONS – COPELAND ANTI-KICKBACK ACT

Compliance with Copeland "Anti-Kickback" Act ("Act") requirements - The contractor shall comply with the following requirements:

(a) Section 1 of the Act, as amended, 18 U.S.C. § 874, applies to all Contracts:

(i) Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part

of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both;

(b) Section 2 of the Act, as amended, 18 U.S.C. § 3145, applies to construction and repair Contracts exceeding $2,000:

(i) In General.—The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

(ii) Application — The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001; and

(c) U.S. DOL regulations "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 CFR Part 3, which are incorporated by reference in this contract.

(d) For additional requirements of the Act not specified in this Article, see preceding Article FTA 17 – Construction Employee Protections – Davis Bacon Act.

21. BONDING FOR CONSTRUCTION ACTIVITIES EXCEEDING $150,000 Bid Bond Requirements
(For Construction)

Refer to BMPO's General Terms and Conditions

22. SEISMIC SAFETY

If this Contract for professional services involves the design of a new building or addition to an existing building, the Contractor agrees that any such new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Provision 23 applies to NONCONSTRUCTION ACTIVITIES

23. NONCONSTRUCTION EMPLOYEE PROTECTION – CONTRACT WORK HOURS & SAFETY STANDARDS ACT
(For all turnkey, rolling stock and operational contracts {except transportation services contracts and open market contracts} exceeding $150,000.)

The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provision Applicable to Nonconstruction Contracts Subject to the Contract Work hours and Safety Standards Act)," 29 CFR Part 5.

Provisions 24 through 28 apply to TRANSIT OPERATIONS

24. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

(2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority sub recipient participating a Project authorized by 49 U.S.C.

§ 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

25. CHARTER SERVICE OPERATIONS

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

26. SCHOOL BUS OPERATIONS

The Contractor agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Contractor understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

27. DRUG USE AND TESTING

The Contractor agrees to establish and implement a drug testing program that complies with 49 CFR Part 40 Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the BMPO, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the BMPO. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

28. ALCOHOL MISUSE AND TESTING

The Contractor agrees to establish and implement an alcohol testing program that complies with 49 CFR Part 40 Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the BMPO. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Provision 29 applies to RESEARCH, DEVELOPMENT, DEMONSTRATION, DEPLOYMENT AND SPECIAL STUDIES

29. PATENT AND RIGHTS IN DATA

Refer to BMPO's Agreement provisions.

Provision 30 applies ONLY to States and Organizations that are being funded directly by the State with FTA grant funds.

30. SPECIAL NOTIFICATION REQUIREMENT FOR STATES

(Per FTA guidance dated July 2011: "The notification requirements concerning federal assistance apply only to States and those organizations that are being funded directly by the State with FTA grant funds. This would include sub-grantees, lessees, or third party contractors of the State. Government agencies that are not part of the State government who are receiving FTA grant funds directly from FTA do not have to comply with the special notification requirements for States." Therefore this clause does not apply to BMPO Contracts.)

The Federal Transit Administration ("FTA") is the Federal agency that is providing the Federal assistance for this Contract. The Catalog of Federal Domestic Assistance Number is , for the amount of $__ .

MISCELLANEOUS SPECIAL REQUIREMENTS

31. ENERGY CONSERVATION - (Applies to all Contracts)

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan, if any, issued in compliance with the Energy Policy and Conservation Act.

32. RECYCLED PRODUCTS - (Contracts greater than $10,000 per year of Items Designated by EPA)

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery

Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

33. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE - (Contracts & Solicitations for ITS Projects)

National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

34. ADA ACCESS - (Contracts for Rolling Stock or Facilities Construction/Renovation)

A. BMPO must 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; 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; 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; and 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.

B. All deliverable items provided by the Contractor for BMPO under this Contract shall comply with the above-referenced laws as well as all other applicable federal, state and local regulations and directives and any subsequent amendments thereto.

Provisions 35 through 37 apply to ROLLING STOCK PROCUREMENTS

35. BUS TESTING

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer

shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

36. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

37. TVM CERTIFICATION

The Transit Vehicle Manufacturer (TVM) shall provide BMPO with a certificate that complies with 49 CFR Part 26.49 stating that the TVM has complied with FTA's DBE requirements. The TVM shall also provide BMPO with the most current letter from the FTA approving the TVM's DBE goal/methodology and eligibility to participate in the FTA DBE program as a TVM in accordance with 49 CFR Part 26.49. If the FTA has not yet approved the DBE Goal, the TVM shall make a certification to that effect as required by 49 CFR Part 26.49 and in addition submit to BMPO a copy of the documents submitted to FTA for approval. These documents shall be submitted with the solicitation response or the TVM's submittal may be deemed non-responsive.

AGREEMENT FOR
ADVANCING STRATEGIC INITIATIVES
BETWEEN
BROWARD METROPOLITAN PLANNING ORGANIZATION
And
WHITEHOUSE GROUP, INC.

Federal Contractual Provisions

EXHIBIT C-2

FEDERAL HIGHWAY ADMINISTRATION REQUIRED CONTRACTUAL PROVISIONS

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

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

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

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

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

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

a) As a sub-recipient of FHWA or FTA funding, BMPO is required to participate in the Florida Department of Transportation (FDOT) Disadvantaged Business

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

b) All bidders must use the FDOT Equal Opportunity Compliance (EOC) system to enter required information, including a Bidders Opportunity List . The selected contractor or consultant must also immediately and regularly enter DBE commitments and payments into EOC. For information on accessing EOC, visit https://www.fdot.gov/equalopportunity/eoc.shtm or contact the system administrator at eoohelp@dot.state.fl.us.

c) Bidders, contractors/consultants, sub-recipients, or subcontractor/consultants may not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The bidder contractor/subcontract, sub-recipient, or subcontractor/consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of FHWA and/or FTA-assisted contracts. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deem appropriate.

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

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

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

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

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

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

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

a) If the FHWA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FHWA. 2 C.F.R. Part 200, Appendix II, ¶ F.

b) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

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

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

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

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

i) Competitively within a timeframe providing for compliance with the contract performance schedule;

ii) Meeting contract performance requirements; or

iii) At a reasonable price.

b) Information about this requirement, along with the list of EPA- designate items, is available through the EPA.

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AGREEMENT FOR
ADVANCING STRATEGIC INITIATIVES
BETWEEN
BROWARD METROPOLITAN PLANNING ORGANIZATION
And
WHITEHOUSE GROUP, INC.

APPENDIX "A"

(AS REFERENCED IN PARAGRAPH 7.4)

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.

(7) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been

acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)."