

**AGREEMENT NO. 26-03**  
**BETWEEN**  
**BROWARD METROPOLITAN PLANNING ORGANIZATION**  
**AND**  
**BS&A SOFTWARE LLC**  
**FOR**  
**ENTERPRISE RESOURCE PLANNING SOFTWARE AS A SERVICE (SaaS)**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025, 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

**BS&A Software LLC**, a foreign corporation authorized to do business in the State of Florida, with its principal business address located at 14965 Abbey Lane, Bath, MI 48808, (hereinafter referred to as (“CONTRACTOR”) for Enterprise Resource Planning Software as a Service (SaaS) (the “Project”).

WITNESSETH:

WHEREAS, the CONTRACTOR has provided the BMPO with implementation and software licenses and services in connection with the BMPO’s Enterprise Resource Planning System; and

WHEREAS, the CONTRACTOR possesses the unique capabilities to continue to maintain its software specific to local governments and in particular the BMPO; and

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

WHEREAS, the Executive Director has determined that the subject services as identified herein are unique to this particular CONTRACTOR and as such, acquisition of the subject services is a sole source purchase, as permitted by the BMPO’s Procurement Rules, in the best interest of the BMPO; and

WHEREAS, on \_\_\_\_\_, the Executive Committee of the BMPO, upon the recommendation of the BMPO’s Executive Director, authorized the appropriate BMPO officials to execute this Agreement with the CONTRACTOR; and

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** During the term of this Agreement, CONTRACTOR agrees to provide Software as a Service (SaaS) for the BMPO, as specifically described in the CONTRACTOR's Software Services Proposal, attached hereto as Attachment "A" to this Agreement.
- 1.2** The parties agree that the Services, as specified in Attachment "A" 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.
- 1.3** 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 and shall remain in effect until such a time as the Services acquired in conjunction with the Contract Documents have been completed and accepted by the BMPO. After the initial Term, the BMPO shall have the sole 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 30 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 described 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.
- 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 **ONE HUNDRED EIGHTY-EIGHT THOUSAND THIRTY ONE AND NO/100 Dollars (\$188,031.00)**, contingent upon the appropriation of funds. The amount of compensation payable by the BMPO to CONTRACTOR shall be based upon the amounts as indicated on attached Attachment "A", which amount shall be accepted by CONTRACTOR as full compensation for all such work performed under this Agreement. It is acknowledged and agreed by CONTRACTOR that these amounts are the maximum payable and constitute a limitation upon BMPO'S obligation to compensate CONTRACTOR for its Services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort, upon CONTRACTOR's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

- 3.2 The parties agree that the annual SaaS fees for modules as specified on attached Attachment "A" may be added or deleted by the BMPO, at its discretion, and the annual SaaS for such modules shall be modified with the next renewal .
- 3.3 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, where applicable.
- 3.4 **Invoices shall be submitted to the BMPO Project Manager and Accounts Payable ([accountspayable@browardmpo.org](mailto:accountspayable@browardmpo.org))**. The submission of travel expenses is not authorized, and such expenses shall not be reimbursed by the BMPO.
- 3.5 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.
- 3.6 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.
- 3.7 Payment shall be made to CONTRACTOR at:  
BSA Software  
14965 Abbey Lane  
Bath, MI 48808  
Attn: Contracts Manager

- 3.8** 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.
- 3.9** If it should become necessary for BMPO to request CONTRACTOR to render any additional services to either supplement the services described in the Scope of Services or to perform additional work, such additional work shall be performed only if set forth in an amendment to this Agreement.

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

- 4.1** This Agreement may be terminated for cause 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 thirty (30) 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** The Executive Director may terminate this Agreement for convenience after consultation with the BMPO's General Counsel. 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. Termination by BMPO shall not entitle BMPO to a refund of any prepaid SaaS fees.
- 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

9.2 of this Agreement. In no event shall the BMPO be liable to CONTRACTOR for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

## **SECTION 5. UNCONTROLLABLE FORCES**

- 5.1** Neither BMPO nor the CONTRACTOR shall be considered to be in default of the Contract Documents if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under the Contract Documents and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.
- 5.2** Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of the Contract Documents.

## **SECTION 6: CLAIMS AND DISPUTES**

- 6.1** A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the BMPO and the CONTRACTOR arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.
- 6.2** Initial notice of Claims by the CONTRACTOR shall be made in writing to the BMPO Project Manager within five (5) business days after the first day the Contractor is aware of the event giving rise to such Claim, or else the CONTRACTOR shall be deemed to have waived the Claim. Written supporting data shall be submitted to the BMPO Project Manager within thirty (30) calendar days after the occurrence of the event unless the BMPO grants additional time in writing, or else the CONTRACTOR shall be deemed to have waived the Claim. All Claims shall be priced so as to compensate the CONTRACTOR for its actual and direct labor, material and equipment costs and extended general conditions expenses, together with markup, as set forth below.

The BMPO Project Manager shall render a decision regarding any Claims within sixty (60) days of receipt of CONTRACTOR's initial notice of Claim.

- 6.3** The CONTRACTOR shall proceed diligently with its performance as directed by the BMPO, regardless of any pending Claim, unless otherwise agreed to by the BMPO in writing. The BMPO shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.
- 6.4** Prior to the initiation of any action or proceeding permitted by these Contract Documents to resolve Claims between the parties, the parties shall first make a good faith effort to resolve any such Claim through this section. If the CONTRACTOR fails to first submit its Claim to the Claim resolution process in this Section, the CONTRACTOR forever waives its right to bring any legal action against the BMPO for breach of contract arising from the Claim. The Contract shall be interpreted, construed and given effect in all respects according to the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, or the United States Federal District Court for the Southern District of Florida and venue for litigation arising out of this Contract shall be exclusively in such state or federal courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS CONTRACT, CONTRACTOR AND BMPO HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT.

## **SECTION 7. INDEMNIFICATION**

- 7.1** 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.
- 7.2** To the fullest extent permitted by law, BMPO hereby agrees to indemnify and hold harmless CONTRACTOR, its 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

BMPO and other person employed or utilized by the BMPO in the performance of this Agreement.

- 7.3** 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 8. INSURANCE**

- 8.1** The CONTRACTOR shall furnish to the BMPO ACORD certificates of insurance that indicate that insurance coverage has been obtained which meets the requirements below. For Commercial General Liability and Automobile Liability insurance, the Broward Metropolitan Planning Organization **must** be shown as an additional insured with respect to these coverages.
- 8.1.1** Commercial General Liability Insurance on a commercial basis in an amount not less than \$2,000,000.00 per occurrence, and \$2,000,000.00 annual aggregate. The requested limits may be met through a combination of primary and umbrella coverages.
- 8.1.2** Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the work, in an amount not less than \$1,000,000.00 per occurrence. and \$1,000,000.00 annual aggregate. Coverage shall stipulate that it is primary over any insurance or self-insurance program available to the BMPO.
- 8.1.3** Workers' Compensation Insurance for all employees of the CONTRACTOR as required by Florida Statutes Chapter 440.
- 8.2** The insurance coverage required shall include those classifications, as listed in the standard liability insurance manuals, which most nearly reflect the operations of the CONTRACTOR.
- 8.3** All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:
- 8.3.1** The company must be rated no less than "B" as a management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the BMPO; or
- 8.3.2** The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to

do Business in Florida”, issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

- 8.4** Certificates will indicate no cancellation, modification, or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.
- 8.5** Compliance with the foregoing requirements shall not relieve CONTRACTOR of its liability and obligation under this section or under any other section if this section or under any other section of the Contract.
- 8.6** Issuance of a purchase order, work authorization or notice to proceed is contingent upon receipt of the insurance documents within ten (10) business days after the execution of the Contract by the BMPO. If the insurance certificate is received within the specific time frame, but not in the manner prescribed in this Section, the CONTRACTOR shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the BMPO. If the CONTRACTOR fails to submit the required insurance documents in the manner prescribed in this Agreement within five (5) business days after the executing of the Contract by an authorized official of the BMPO, CONTRACTOR shall be in default and the Contract documents may be rescinded. Under such circumstances, the CONTRACTOR may be prohibited from submitting future responses to BMPO procurements.
- 8.7** CONTRACTOR shall be responsible for assuring that the insurance certificate required in conjunction with this Section remain in force for the duration of the period of performance for any contractual agreement(s) resulting from this solicitation. If insurance certificates are scheduled to expire during the term hereof, the CONTRACTOR shall be responsible for submitting new or renewed insurance certificates to the BMPO at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the term hereof, the BMPO shall suspend the Contract until such time as the new or renewed certificates are received by the BMPO in a manner prescribed in this Section; provided however, that this suspension period does not exceed thirty (30) days, the BMPO may at its sole discretion, terminate the Contract and seek re-procurement charges from the CONTRACTOR.
- 8.8** If, in the judgment of the BMPO, prevailing conditions warrant the provision by CONTRACTOR of additional liability insurance coverage or coverage which is different in kind, the BMPO reserves the right to require the provision by CONTRACTOR of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should CONTRACTOR fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following the BMPO’s written notice, the Contract shall be

considered terminated on the date that the required change in policy coverage would otherwise take effect.

- 8.9** All Subcontractors retained or hired for the Work shall be required to maintain coverages, limits and term no less restrictive than those required of CONTRACTOR. CONTRACTOR shall be responsible for monitoring insurance compliance of all its Subcontractors. Additionally, CONTRACTOR shall make available to the BMPO proof of insurance of all Subcontractors upon request.

## **SECTION 9. MISCELLANEOUS**

- 9.1 BMPO Project Manager.** The BMPO Project Manager 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, **Derek Brown**, is designated as the BMPO Project Manager.

- 9.2 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.

### **9.3 Audit and Inspection Rights and Retention of Records; Public Records.**

- 9.3.1** 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.

- 9.3.2** 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.

- 9.3.3 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.
- 9.3.4 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.
- 9.3.5 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

<b>Custodian of Records:</b>	<b>Jacqueline Barszewski</b>
<b>Mailing address:</b>	<b>100 West Cypress Creek Road, Suite 650 Fort Lauderdale, FL 33309</b>
<b>Telephone number:</b>	<b>(954) 876-0053</b>
<b>Email:</b>	<b>barszewskij@browardmpo.org</b>

- 9.4 **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 Attachment “B”, including CONTRACTOR’s responsibility to incorporate the provisions in subcontracts, throughout the term of this Agreement.

- 9.5 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.
- 9.6 Scrutinized Companies.** The CONTRACTOR certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, Scrutinized Companies that boycott Israel List, and that it does not have business operations in Cuba or Syria as provided in Fla. Stat. §287.135, as may be amended or revised. BMPO may terminate the Agreement at the BMPO’s option if the CONTRACTOR is found to have submitted a false certification as provided under subsection (5) of Fla. Stat. §287.135, as may be amended or revised, or been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba, Syria, Sudan, or Scrutinized Companies that Boycott Israel List, as defined in Fla. Stat. § 287.135, as may be amended or revised.
- 9.7 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. Nor shall employees and contractors to the CONTRACTOR enjoy any privity of contract with 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.

The CONTRACTOR shall supply competent and capable employees and contractors. The BMPO may require the CONTRACTOR to remove any employee or contractor it deems careless, incompetent, insubordinate, or otherwise objectionable and whose continued performance of the services is not in the best interest of the BMPO.

**9.8 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.

**9.9 Notices.** Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. mail, with return receipt requested, email transmission, express delivery service or hand delivery, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

**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:**

BSA Software  
14965 Abbey Lane  
Bath, MI 48808  
Attn: Contracts Manager

**9.10 Assignment and Performance.** Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by CONTRACTOR. In addition, CONTRACTOR shall not subcontract any portion of the work required by this

Agreement, except with the prior approval of the BMPO, which shall be in BMPO's sole and absolute discretion. A list of all such subcontractors shall be included in the Proposal. If additional subcontractors are to be used during the term of this Agreement, other than those submitted in the Proposal, a list of such subcontractors shall be provided to the BMPO, subject to BMPO's approval.

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

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

- 9.11 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.

- 9.12 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.

- 9.13 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.
- 9.14 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.
- 9.15 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.
- 9.16 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.
- 9.17 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any attachment 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 9 of this Agreement shall prevail and be given effect.
- 9.18 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.
- 9.19 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.
- 9.20 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.

- 9.21 Drug-Free Workplace.** CONTRACTOR shall maintain a drug-free workplace.
- 9.22 Incorporation by Reference.** The truth and accuracy of each “Whereas” clause set forth above is acknowledged by the parties. The attached Attachments are incorporated hereto and made a part of this Agreement.
- 9.23 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.
- 9.24 Headings.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 9.25 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.
- 9.26 Survival of Provisions.** Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms of conditions are completed, and shall be fully enforceable by either party.
- 9.27 Disadvantaged Business Enterprise (DBE) Program.**
- 9.27.1** 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.
- 9.27.2** 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 subcontractor's 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.

**9.27.3** 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% (6.6% 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](mailto:eoohelp@dot.state.fl.us).

**9.28 Intellectual Property.** All information, data, programs, publications and media created specifically for and paid for by the BMPO is the property of the BMPO unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

**9.29 Limitation on Liability and Damages.**

Subject to the terms and conditions contained in Sections 7 and 8 herein, except as to claims, damages or losses arising out of (i) intentional and willful misconduct or (ii) fraud, BS&A's entire liability and responsibility for any and all claims, damages, or losses arising from the BSA software products (including but not limited to their use, operation, and/or failure to operate), professional services, maintenance and support, any third-party performance or lack thereof, or otherwise arising out of or relating to this Agreement, shall be absolutely limited to damages not in excess of the amount of insurance proceeds actually available without reservation at the time of settlement or judgment to cover the claim(s), damages or losses by the BMPO under insurance placed or provided pursuant to this Agreement.

Except as otherwise provided herein, CONTRACTOR shall not be liable for any indirect, consequential, special, incidental, or contingent damages or expenses, including, without limiting the generality of the foregoing, loss of revenue, profit,

or use. To the extent that applicable law does not permit limitations set forth herein, the liability and damages shall be limited and restricted to the extent permitted by law. The preceding limitation does not apply to and no credit shall be issued against such liability limitation for i) CONTRACTOR's defense and hold harmless obligations set forth in the Agreement as they pertain to patent or other Intellectual Property infringement; and ii) claims which arise or result from fraudulent or unlawful acts of BSA or its employees, contractors or agents.

**9.30 Prohibition Against Considering Social, Political, or Ideological Interests.** Pursuant to Section 287.05701, Florida Statutes, the BMPO will not give preference to any contractor based on CONTRACTOR's social, political, or ideological interests and will not request documentation of or consider such interests in the determination of responsible CONTRACTOR.

**9.31 Federal Highway Administration Funded Agreement.** This Project is funded with assistance from the Federal Highway Administration ("FHWA"). The BMPO will follow and require the Successful Proposer(s) to comply with, all applicable 3rd party procurement policies in accordance with the Regulations of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time. Applicable FHWA provisions are located below (Section 9.31) and incorporated throughout the Contract Documents.

**9.32 FHWA Provisions**

**9.32.1 Clean Air Act (Contracts greater than \$150,000)**

**9.32.1.1** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q).

**9.32.1.2** The Contractor agrees to report each violation to the BMPO and understands and agrees that the BMPO will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

**9.32.1.3** The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance from FHWA.

**9.32.2 Federal Water Pollution Control Act (Contracts greater than \$150,000)**

**9.32.2.1** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, (33 U.S.C. 1251-1387).

**9.32.2.2** The Contractor agrees to report each violation to the BMPO and understands and agrees that the BMPO will, in turn, report each violation as

required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

**9.32.2.3** The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FHWA.

## **SECTION 10. GRANT OF LICENSE, SOFTWARE, WARRANTIES**

- 10.1 Grant of License.** Consistent with the grant of license that was provided to the BMPO pursuant to the Previous Agreement, CONTRACTOR hereby grants to BMPO a continued nonexclusive, nontransferable license to use the Software described in Attachment A solely for internal business purposes by BMPO and/or its designated service provider.
- 10.2 Use of Licenses by Personnel Who Are Not Employees.** BMPO's consultants, contractors, external customers, and business partners may access and use the Software under the BMPO's direction.
- 10.3 Replication of Software.** BMPO shall not copy Software for any purposes. BMPO has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using CONTRACTOR's recommended database and development tools without voiding the maintenance and support terms or warranties herein.
- 10.4 Disaster Recovery & Disaster Recovery Testing.** There will be no additional software license cost to process at another site in the event of a disaster that shuts down BMPO's primary location or for testing at the disaster recovery site.
- 10.5 Warranty.**
- 10.5.1** CONTRACTOR represents and warrants that it has the right to grant the licenses set forth under this Agreement. CONTRACTOR further represents and warrants that it has good and marketable title to the Software sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. CONTRACTOR further represents and warrants that neither the Software in the form delivered by CONTRACTOR to BMPO, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by BMPO, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- 10.5.2** In the event that any third party makes a claim or files a lawsuit challenging BMPO's right to use the Software, CONTRACTOR shall defend and indemnify BMPO and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses)

arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that CONTRACTOR shall have the sole and exclusive right to select and retain counsel for BMPO in connection with the defense thereof, and shall make all decisions relating to the conduct of the BMPO's defense and any settlement made on behalf of BMPO. In resolving any such infringement claim, CONTRACTOR shall, in its reasonable discretion, either procure a license to enable BMPO to continue to use the Software or develop or obtain a non-infringing substitute acceptable to BMPO at CONTRACTOR's cost.

**10.6 Continuity of Warranty.** BMPO may continue the Warranty protection described above by purchasing and paying for on-going Maintenance and Support Services described below. By doing so, all Warranty, and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as payments for Annual Maintenance and Support Fees are kept current.

**10.7 Disclaimers and Limitations of Remedies.**

Except as specifically stated in the Warranty section of this Agreement, the Software is Licensed "as is" without warranty of any kind, other than expressed or implied herein. In no event shall CONTRACTOR be liable for any indirect, special or consequential damages unless as otherwise stated herein, including, but not limited to, loss of anticipated profits, revenue or savings, arising from the use of or inability to use the Software or breach of any expressed or implied warranty, even if CONTRACTOR or its agent has been advised of the possibility of such damages.

**10.8 Intellectual Property.** All information, data, programs, publications and media created specifically for and paid for by the BMPO is the property of the BMPO unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

**10.9 Confidentiality.** Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Except as otherwise required by law, each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement. This obligation of confidentiality shall not apply to (a) information that at the time of the disclosure is in the public domain; (b) information that, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party; (c) information that a party can establish by reasonable proof was in that party's possession at the time of disclosure; (d) information that a party receives from a third party who has a right to disclose it to that party; or (e) information that is subject to FOIA or Florida's public records law.

**10.10 Effect of Regulation.** Should any local, state, or national regulatory authority having jurisdiction over the BMPO enter a valid and enforceable order upon the BMPO which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the BMPO of a material part of its Agreement with the CONTRACTOR. In the event this order results in depriving the BMPO of material parts or raising their costs beyond that defined in this Agreement, the BMPO shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon thirty (30) days written prior notice to the CONTRACTOR. Should the Agreement be terminated under such circumstances, the BMPO shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The BMPO shall not be charged for such compliance beyond the cost of the annual maintenance and support fees. The BMPO shall also not be charged for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the annual maintenance and support fees.

**10.11 Advertisement.** CONTRACTOR shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the BMPO unless CONTRACTOR receives specific written authorization in advance from the BMPO's, Executive Director. CONTRACTOR will limit and direct any of its advertising on the BMPO's premises and shall make arrangements for such advertising through the Executive Director. CONTRACTOR shall not install any signs or other displays within or outside of the BMPO's premises unless in each instance the prior written approval of the BMPO's Executive Director has been obtained. However, nothing in this clause shall preclude CONTRACTOR from listing the BMPO on its routine BMPO list for matters of reference.

#### **10.12 Professional Services Warranty**

**10.12.1** CONTRACTOR agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. CONTRACTOR agrees that, at all times, the employees of CONTRACTOR furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.

**10.12.2** CONTRACTOR agrees that all persons working for or on behalf of CONTRACTOR whose duties bring them upon the BMPO's premises shall obey the rules and regulations that are established by the BMPO and shall comply with the reasonable directions of the BMPO's officers. The BMPO may, at any time, require the removal and replacement of any of CONTRACTOR's employees for good cause.

- 10.12.3** CONTRACTOR shall be responsible for the acts of its employees and agents while on the BMPO's premises. Accordingly, CONTRACTOR agrees to take all necessary measures to prevent injury and loss to persons or property located on the BMPO's premises. CONTRACTOR shall be responsible for all damages to persons or property caused by CONTRACTOR or any of its agents or employees. CONTRACTOR shall promptly repair to the specifications of the BMPO, any damage that it, or its employees or agents, may cause to the BMPO's premises or equipment; on CONTRACTOR's failure to do so, the BMPO may repair such damage and CONTRACTOR shall reimburse the BMPO promptly for the cost of repair.
- 10.12.4** CONTRACTOR agrees that, in the event of an accident of any kind, CONTRACTOR will immediately notify the BMPO's contact person and thereafter, if requested, furnish a full written report of such accident.
- 10.12.5** CONTRACTOR shall perform the services contemplated in the Agreement without interfering in any way with the activities of the BMPO's staff or visitors.
- 10.12.6** CONTRACTOR and its employees or agents shall have the right to use only those facilities of the BMPO that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the BMPO. The BMPO shall also extend parking privileges to properly identified members of CONTRACTOR's full-time staff on the same basis as they are extended to the BMPO's staff.
- 10.12.7** The BMPO shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of CONTRACTOR or its employees or subcontractors.
- 10.13 Right to Withhold Payment.** If the CONTRACTOR breaches any provision of this Agreement, the BMPO shall have a right to withhold all payments due to the CONTRACTOR until such breach has been fully cured.
- 10.14 Maintenance and Support Services.** For as long as BMPO pays the maintenance and support fees delineated in Attachment "A". CONTRACTOR will provide BMPO with maintenance and support services ("Extended Services") with respect to the Software. Such Extended Services shall consist of the following:
- 10.14.1** CONTRACTOR shall provide maintenance for the Software necessary to insure its operation in material conformance with all Documentation, Contract Documents and all representations and warranties set forth herein.

- 10.14.2** CONTRACTOR shall provide BMPO with any revisions, updates and enhancements of the Software, together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.
- 10.14.3** CONTRACTOR agrees that the rates specified shall remain in effect for a period of minimally one (1) year from initial contract signing.
- 10.15 Annual Maintenance and Support Fees.** Annual maintenance and support fees shall be as provided in Attachment “A”.
- 10.16 Federally Mandated Changes.** CONTRACTOR shall supply BMPO with all federally mandated changes to CONTRACTOR’s Software. CONTRACTOR will make a good faith effort to provide BMPO with these changes within the later of forty five (45) days of their enactment dates prescribed by the aforementioned bodies, or forty five (45) days of BMPO’s notification to CONTRACTOR of the required changes. In the event that CONTRACTOR is unable to supply these changes within forty five (45) days of the enactment, BMPO will be credited a prorated share of the annual maintenance and support fee for every week CONTRACTOR is tardy in delivering the required change.
- 10.17 Future Releases/Upgrades.** BMPO shall be entitled to future releases and upgrades, whether of a “minor” or major” nature, of CONTRACTOR Software for no additional cost beyond the annual maintenance and support fees delineated in Attachment A.
- 10.18 Contingency Services.** BMPO may require modifications, interfaces, conversion, report writing, etc., services from CONTRACTOR (“Customizations”). CONTRACTOR agrees to provide a written quotation describing the work to be performed and estimating the costs for BMPO approval before any work is initiated by CONTRACTOR. CONTRACTOR will not exceed the costs set forth in the mutually agreed to written quotation without justification, in writing, that is acceptable to the BMPO. No costs in excess of the estimates will be paid by BMPO unless approved in writing in advance of fee incurrence.

**AGREEMENT BETWEEN THE BMPO AND BS&A SOFTWARE LLC  
FOR ENTERPRISE RESOURCE PLANNING SOFTWARE AS A SERVICE (SaaS)**

**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

By: \_\_\_\_\_  
Yvette Colbourne, Chair

This \_\_\_\_\_ day of \_\_\_\_\_ 2025.

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

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

**AGREEMENT BETWEEN THE BMPO AND BS&A SOFTWARE LLC  
FOR ENTERPRISE RESOURCE PLANNING SOFTWARE AS A SERVICE (SaaS)**

**CONTRACTOR**

WITNESSES:

BS&A SOFTWARE LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

This day \_\_\_\_ of \_\_\_\_\_, 2025.

Print Name: \_\_\_\_\_

**AGREEMENT BETWEEN THE BMPO AND BS&A SOFTWARE LLC  
FOR ENTERPRISE RESOURCE PLANNING SOFTWARE AS A SERVICE (SaaS)**

**ATTACHMENTS LIST**

- 1) **Attachment “A”** – CONTRACTOR’s Proposal
- 2) **Attachment “B”** – BMPO Non-Discrimination Requirements
- 3) **Attachment “C”** – Required Forms
- 4) **Attachment “D”** – Final Release on Contract Affidavit
- 5) **Attachment “E”** – Contractor Performance Evaluation Form

# **ATTACHMENT “A”**

## **CONTRACTOR'S PROPOSAL**

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## **Scope of Services**

### **A. Overview**

The Scope of Services outlines the information technology service levels BSA will provide to Customer in order to ensure the availability of the BSA Software Product(s) Customer has contracted for BSA to provide.

### **B. Service Availability**

The total number of minutes in a calendar quarter that the BSA Software Product(s) are capable of receiving, processing and responding to requests, not inclusive of system maintenance, Customer Incidents and Force Majeure ("Service Availability") of the BSA Software Product(s) is intended to be 24/7/365. BSA sets Service Availability goals and measure whether BSA has met those goals by tracking the percentage of time that the BSA Software Product(s) are available during a calendar quarter, with percentages rounded to the nearest whole number ("Attainment").

#### **i. Customer Responsibilities**

Whenever Customer experiences time when the BSA Software Product(s) are not available for use, due to service unavailability ("Downtime"), Customer shall, as a condition of receiving relief, make a support call according to the procedures outlined in the Support Call process. Customer will receive a support incident tracking number. As a condition to receiving Customer Relief, per sub-section iii below, Customer must Document, in writing, all Downtime that Customer has experienced during a calendar quarter. Customer must deliver documentation of Downtime to BSA within 30 days of the end of the calendar quarter.

The documentation provided by Customer must provide clear and convincing evidence of the Downtime. It must include, for example, the support incident tracking number(s) as well as the date, time and duration of the Downtime.

#### **ii. BSA Responsibilities**

When BSA receives a call from Customer that Downtime has occurred or is occurring, BSA will work with Customer to identify the cause of the Downtime including whether the cause may be the result of a Customer applications, content, equipment, or the acts or omissions of any of Customer's service users or third-party providers over whom BSA exercises no control ("Customer Incident"). BSA will also work with Customer to resume normal use of the BSA Software Product(s).

Upon timely receipt of Customer's Downtime report, BSA will compare the Downtime report to BSA's own outage logs and support tickets in order to verify that Downtime for which BSA is responsible occurred.

BSA will respond to Customer’s Downtime report within thirty (30) days of receipt. To the extent BSA confirms Downtime for which BSA is responsible, BSA will provide Customer with the relief set forth below.

**iii. Customer Relief**

When the Service Availability goal is not met due to confirmed Downtime, BSA will provide Customer with relief that corresponds to the percentage amount by which that goal was not met, as set forth in the relief schedule below.

Notwithstanding the above, the total amount of all relief that would be due to Customer per quarter will not exceed five percent (5%) of one quarter of the current SaaS fee. The total credits confirmed by BSA in one or more quarters of a billing cycle will be applied to the next standard billing. Issuance of credits shall be Customer’s sole remedy for Downtime; provided, however, issuance of such credit does not relieve BSA of the obligation under the Agreement to correct the problem which created the Downtime.

Each quarter, BSA will compare confirmed Downtime to Service Availability. In the event that Attainment does not meet the targeted Attainment, BSA will provide the following relief to Customer, calculated on a quarterly basis, and applied to the next regular billing of the SaaS fee.

**Customer Relief Schedule**

<b>Targeted Attainment</b>	<b>Achieved Attainment</b>	<b>Customer Relief</b>
100%	98-99%	Remedial action will be taken.
100%	95-97%	4% credit of fee for affected calendar quarter, credited to next regular billing.
100%	<95%	5% credit of fee for affected calendar quarter, credited to next regular billing.

Customer may request a report from BSA which documents the preceding quarter’s Service Availability, Downtime, and any remedial actions that have been or will be taken, as well as any credits that may be issued to Customer.

**C. Applicability**

The commitments set forth in this Scope of Services do not apply during maintenance windows, Customer Incidents, or Force Majeure. BSA will use reasonable efforts to perform system maintenance at times which are historically evidenced to have limited system usage. In the event that maintenance occurs during periods of higher system usage, BSA will provide Customer advance notice of those maintenance events, to allow Customer to prepare for those maintenance events.

**D. Force Majeure**

Customer will not hold BSA responsible for not meeting targeted Attainment levels outlined in this Scope of Services to the extent that such failure is caused by Force Majeure.

**AGREEMENT BETWEEN THE BMPO AND  
BS&A SOFTWARE, LLC  
FOR ENTERPRISE RESOURCE PLANNING SOFTWARE AS A SERVICE  
COMPENSATION SCHEDULE**

	10/17/2025- 10/16/2026	10/17/2026- 10/16/2027	10/17/2027- 10/16/2028	10/17/2028- 10/16/2029	10/17/2029- 10/16/2030	Total
<b>Annual SaaS Fee*</b>						
General Ledger/Budgeting	4,641	4,873	5,117	5,373	5,642	
Accounts Payable	3,796	3,986	4,185	4,394	4,614	
Cash Receipting	4,232	4,444	4,666	4,899	5,144	
Payroll	6,289	6,603	6,933	7,280	7,644	
Purchase Order	3,709	3,894	4,089	4,293	4,508	
Accounts Receivable	3,535	3,712	3,898	4,093	4,298	
Fixed Assets	3,448	3,620	3,801	3,991	4,191	
Human Resources	4,379	4,598	4,828	5,069	5,322	
Total – Annual SaaS Fee	34,029	35,730	37,517	39,392	41,363	\$188,031
Total						\$188,031

\*Annual SaaS Fee has been estimated at 5% increase per year, but is limited to the greater of the increase in the Consumer Price Index as set forth by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers – U.S. City Average or 5%.

# **ATTACHMENT “B”**

## **BMPO NON-DISCRIMINATION REQUIREMENTS**

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## NON-DISCRIMINATION 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, also where consultant work items include assessing or planning pedestrian rights of way, it will follow the [FDOT Design Manual](#) or [Florida GreenBook](#), as applicable; 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.)”

**(8) Non-Discrimination Language for the Public:** The selected consultant will place or cause to be placed in any information developed for public dissemination the following statement: *The MPO does not discriminate in any program, service or activity on the basis of race, color, national origin, sex, age, disability, religion or family status. For more information contact*

\_\_\_\_\_ at \_\_\_\_\_  
*or 711 (for hearing impaired). Those requiring language services (free of charge) or accommodation for a disability should provide contact the MPO at least \_\_\_\_\_ days in advance.*

**(9) Cooperation with MPO Oversight:** The MPO is responsible for conducting and documenting oversight of the RFP, bidding process, award and delivery of the consultant contract for compliance with civil rights authorities. This includes but is not limited to conducting Commercially Useful Function (CUF) reviews on all DBEs used by the selected consultant (or the consultant itself, if a DBE), and by reviewing payments and retainage to ensure subconsultants are paid promptly as defined in paragraph 11. The selected consultant will cooperate fully with MPO oversight efforts, as well as those instituted by FDOT and/or FHWA.

## **ATTACHMENT “C”**

### **REQUIRED FORMS**

Drug-Free Workplace Certificate

Anti-Kickback Affidavit

Non-Collusion Affidavit

Non-Discrimination Affidavit

Independence Affidavit

Accuracy of Proposal Certification

DBE Participation Statement and Bid Opportunity List

FDOT Form No. 375-030-60 Vendor Certification Regarding Scrutinized Companies Lists

FDOT Form No. 375-030-32 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts

FDOT Form No. 375-030-33 Certification for Disclosure of Lobbying Activities on Federal Aid Contracts

FDOT Form No. 375-030-34 Disclosure of Lobbying Activities

FDOT Form No. 375-031-06 E-Verify

FDOT Form No. 375-031-01 Affidavit Regarding Labor and Services

# **ATTACHMENT “D”**

## **FINAL RELEASE ON CONTRACT AFFIDAVIT**

**Note: To be completed by Contractor at the end of the term of the contract**

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**FINAL RELEASE ON CONTRACT AND AFFIDAVIT**

STATE OF FLORIDA            )  
COUNTY OF \_\_\_\_\_)

Before me, the undersigned authority, personally appeared \_\_\_\_\_,  
who after being duly sworn, deposes and says:

In accordance with the Contract Documents and in consideration of \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_) paid, <Contractor> releases and waives for itself and its  
Subcontractors, material-person, successors and assigns, all claims, demands, damages, costs and  
expenses, whether in contract or in tort, against the Broward Metropolitan Planning Organization  
("BMPO") existing under the laws of the State of Florida relating in any way to the performance  
of Agreement No. 26-01 between THE BMPO and <Contractor>.

(1) <Contractor> certifies for itself and its Subconsultants, material-person, successors  
and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for  
which the BMPO might be sued or for which a lien or a demand against any payment bond might  
be filed, have been fully satisfied and paid.

(2) <Contractor> agrees to indemnify, defend and save harmless the BMPO from all  
demands or suits, actions, claims of liens or other charges filed or asserted against the BMPO arising  
out of the performance by <Contractor> of the Work covered by this Final Release on Contract  
and Affidavit.

(3) This Final Release on Contract and Affidavit shall not be construed to represent,  
expressed or implied, any release on behalf of the BMPO of any of the contractual covenants and  
obligations of <Contractor>.

**<Contractor>:**

\_\_\_\_\_ By: \_\_\_\_\_  
President

\_\_\_\_\_ Date: \_\_\_\_\_

Witnesses

[Corporate Seal]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_ Corporation, on behalf of the Corporation. This person is  
personally known to me or has produced a \_\_\_\_\_ (state) driver's license no. \_\_\_\_\_ as  
identification.

My Commission Expires:

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

**ATTACHMENT “E”**

**CONTRACTOR PERFORMANCE  
EVALUATION FORM**

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## **Contractor Performance Evaluation**

The BMPO will periodically evaluate the Contractor's performance utilizing the Contractor Performance Evaluation Form in this Attachment. This evaluation will be done at an interval no less than once per year during the contract term. For contracts with a term less than one year, the evaluation may be performed intermittently as determined by the BMPO. The BMPO assigned evaluator will complete the Contractor Performance Evaluation Form and provide a copy to the Contractor for review and response. Written Contractor responses will be incorporated into the evaluations. In any instances where the performance is below satisfactory, the Contractor will have thirty (30) days to provide a written response to the BMPO.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

## CONTRACTOR PERFORMANCE EVALUATION FORM

CONTRACTOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ AWARD DATE: \_\_\_\_\_

EVALUATION NO. \_\_\_\_\_ DATE: \_\_\_\_\_ PERIOD COVERED: \_\_\_\_\_ TO \_\_\_\_\_

EVALUATED BY: \_\_\_\_\_

(Signature & Title)

	CONTRACTUAL	ACTUAL *
PRICE:		
COMPLETION DATE:		
TIME TO COMPLETE		

Ratings:

E = Excellent

G = Good

S = Satisfactory

U = Unsatisfactory

N/A = Not Applicable

\* = For Final Evaluation Only. Actual includes contractual plus all Amendments and Change orders.

**BROWARD METROPOLITAN PLANNING ORGANIZATION  
EVALUATION OF CONTRACTOR'S PERFORMANCE**

EVALUATED ITEM	EVALUATION NO.			
	1	2	3	4
Quality of Contractor's Work				
Adherence to Contract Specs/Scope of Services				
Quality of Subcontractor's Work				
Quality of Project Manager/Supervisory Personnel				
Protection of BMPO Property				
Minimal Interference with BMPO Operations				
Timely Submission of Reports, Project Schedules and Deliverables				
Adherence to Project Schedule				
Compliance with Safety Standards				
Communication with BMPO Project Manager				
Attendance at Project Meetings				
Cooperation with Other Contractors				
Timely Notification of Possible Delays				

<b>*** OVERALL EVALUATION ***</b>				
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COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**\*NOTE: PLEASE ATTACH BACKUP DOCUMENTATION FOR ALL EVALUATIONS RATED BELOW SATISFACTORY OR AS REQUESTED BY PROCUREMENT.**