

SUBRECIPIENT AGREEMENT

BETWEEN

BROWARD METROPOLITAN PLANNING ORGANIZATION

And



For

MOBILITY HUB PROJECT

This is an Agreement made and entered into by and between: **BROWARD METROPOLITAN PLANNING ORGANIZATION**, created pursuant to Section 339.175, Florida Statutes, hereinafter referred to as "BMPO,"

AND

CITY OF [REDACTED], a political subdivision of the State of Florida, hereinafter referred to as "City".

WHEREAS, both BMPO and the CITY are duly empowered under Florida statutes, in particular, [Section 163.01](#) to enter into Interlocal Agreements for the sharing of certain government powers and obligations; and

WHEREAS, the BMPO Long Range Transportation Plan (LRTP) developed the concept of a Mobility Hub as a transit access point with frequent transit service, high development potential, and a critical point for trip generation or transfers within the transit system; and

WHEREAS, subsequent planning studies have identified the City of as a regional priority for the implementation of the Mobility Hub concept; and

WHEREAS, it is envisioned that the Mobility Hub project would include pedestrian and bicycle improvements, secure and comfortable places to wait for transit, and safe and easy transfers between routes; and

WHEREAS, the Parties to this Agreement desire to participate cooperatively to implement the Mobility Hub Project (the Project); and

WHEREAS, Federal Highway Administration (FHWA) flexed to the Federal Transit Administration (FTA) certain eligible regional surface transportation funds for the benefit of and use by BMPO, and FTA has provided these funds available through the Urbanized Area Formula Grant program (49 USC §5307); and

WHEREAS, FTA has approved BMPO's grant application to use the flexed funds in the amount of \$ million to design and construct the Mobility Hub project matched by \$ in Transportation Development Credits; and

WHEREAS, of the \$ million, \$ has been allocated to the CITY for the design and construction of the Project; and

WHEREAS, due to the use of FTA grant funds certain additional requirements must be complied with that were not specifically defined in the Subrecipient Agreement; and

WHEREAS, this Agreement is intended to define those roles and responsibilities of the Parties with respect to the development, engineering, construction, and maintenance of the Project including, but not limited to, procurement activities, invoicing, review and approval of eligible costs, compliance with grant provisions including conformance with scope, schedule, and budget and related timely reporting, as well as all FTA pass-through requirements and reporting that were not defined in the Subrecipient Agreement.

WHEREAS, the BMPO is a Direct Recipient in the Miami Urbanized Area of federal assistance from the Federal Transit Administration ("FTA"); and

WHEREAS, the BMPO will use an FTA Grant Agreement as the mechanism to reimburse the City, as it completes specified milestones for this Project. FTA approval of the Grant Agreement is anticipated in Fiscal Year 2021, at which time the Grant Agreement will be an exhibit to this Agreement; and

WHEREAS, the BMPO is willing to utilize the Grant Funds to fund the Project which will be administered by the BMPO and implemented by City; and

WHEREAS, the BMPO is responsible for ensuring that the Grant Funds are properly utilized to implement the Project and that the City complies with FTA's Section 5307 grant requirements; and

WHEREAS, the City desires to promote transit-focused amenities to elevate the role of transit within the Program area, along with crossing and wayfinding elements that are responsive to varying needs for residents, local employees, shoppers, etc., dependent upon the location in the Mobility Hub area; and

WHEREAS, on [REDACTED] the City Commission passed and adopted Resolution No. R- [REDACTED] which authorized the appropriate City officials to execute this Agreement with the BMPO; and

WHEREAS, on [REDACTED] the BMPO Board authorized the appropriate BMPO officials to execute this Agreement with the City; and

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

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the BMPO and City agree as follows:

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SAMPLE

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

1.1

Agreement - means this document, Articles 1 through 11, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.

1.2

Effective Date and Term — This Agreement shall take effect on the date executed by the last of the Parties. This Agreement and the Subrecipient Agreement shall remain in effect until the grant obligations are met and the BMPO provides notice and final acceptance of the CITY's deliverables consistent with the scope and purpose of the FTA §5307 grant.

1.3

Supplemental Termination Provisions — The Parties may terminate this Agreement subject to the following conditions:

- a. If the CITY elects not to continue the Project at any point, the CITY agrees to reimburse the BMPO for all grant funds used for incurred eligible costs including those expended by BMPO. All other terms and conditions of this agreement would remain in effect.
- b. Federal Government Termination — Any or all terms of this Agreement or the Subrecipient Agreement may be suspended or terminated if the Federal Government suspends or terminates the Project funding.
- c. In the event that this Agreement is terminated at any point before grant close out, BMPO will continue to serve as the FTA Grantee and the CITY will continue to be the Owner until any contracts related to the Project and/or this Agreement are closed and any dispute with any contractor is resolved, and/or the Project is complete, and records are transferred.
- d. The parties agree that they will provide mutual support to ensure each Party meets its obligation under the Subrecipient Agreement and this Agreement.
- e. The Parties agree that the BMPO, as the FTA recipient, has a fundamental oversight function to ensure that all FTA requirements are met, and the CITY will provide all necessary records and materials in a timely manner to ensure that BMPO can meet that function during the term of this Agreement.

1.2

BMPO Board – The Broward Metropolitan Planning Organization Board.

1.3

BMPO Contract Administrator - The BMPO Executive Director, or his/her designee. The primary responsibilities of the BMPO Contract Administrator are to coordinate and communicate with City.

1.4

City Contract Administrator - The City Manager of the City, or his/her designee. The primary responsibilities of the City Contract Administrator are to coordinate and communicate with BMPO and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the City Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

1.5

Project - The Project consists of the services described in Article 2.

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ARTICLE 2
PURPOSE AND SCOPE

2.1

The purpose of this Agreement is to set out the terms and conditions for the City to provide management of the design and construction of streetscape improvements in the Project Area as identified in the Mobility Hub Master Plan Planning Framework (Technical Memo 4), Project Elements (Technical Memo 5), and Implementation Strategy (Technical Memo 6) in partnership with the BMPO which include:

- a. _____
- b. _____
- c. _____

2.2

The Project Area is located in _____

2.3

In Fiscal Year 2021, the BMPO will make available \$ of flex funds from the Federal Transit Administration (“FTA”) for the implementation of the Hub recommendations. The City will by accepting these FTA funds, agree to the maintenance of all new Hub elements as a condition of the funding. Through this Agreement, the BMPO will reimburse the City for completing the design and leading the construction of the agreed Mobility Hub improvements. The reimbursement will occur on a monthly basis as the City provides invoices and progress reports to document its progress.

2.4

Further, the City will leverage various funding sources to the extent feasible, targeting alternate funding sources, including local funds, for improvements that are not eligible for FTA funding.

2.5

The City will be responsible for administering and managing the Project in a manner satisfactory to the BMPO and consistent with the concepts for streetscape improvements and implementation recommendations developed as part of the Project.

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ARTICLE 3

FEDERAL GRANT PROGRESS AND FINANCIAL REPORTING

3.1

The CITY agrees to submit timely progress and financial reports to the BMPO, so that the BMPO can submit required timely and accurate progress and financial reports to FTA and as outlined in the Subrecipient Agreement Section 3.4. The Parties agree to work collaboratively to ensure reports to FTA are complete, accurate, and timely.

3.2

In addition to the progress reporting elements listed in Subrecipient Agreement Section 3.4, any delay in schedule or concern about not meeting the Project grant schedule or expanding the scope or exceeding the grant budget must be identified and accompanied by an explanation of what steps are being taken to bring the scope, schedule and budget back in line with the grant provisions.

3.3

If for any reason the CITY does not provide the required progress and financial reports, the BMPO reserves the right to withhold future reimbursements for the Project.

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ARTICLE 4

PROCUREMENT PROCEDURES

4.1

The CITY agrees that it must demonstrate that their procurement policies and procedures meet the guidelines as outlined in Article 3 of the Subrecipient Agreement, including the FTA/Federal procedural and recordkeeping requirements. The CITY and BMPO agree that the CITY will have the primary role overseeing and administering the contract and related design and construction activities for the Project. These duties include but are not limited to: procurement of design and construction contractors; design oversight; approval of design drawings, specifications, and the engineers estimate; permits as required; right-of-way acquisition; coordination with utility companies; other third party agreements; supervision and approval of all construction activities; final acceptance of the Project; and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the contract(s).

4.2

In the event that a submittal, contract modification, or supplemental agreement is determined by the CITY to be necessary, and it is expected to increase the cost or time for performance of any contract awarded by the CITY, the CITY agrees to submit written notice to the BMPO consistent with the information provided in Section 11.2 of the Subrecipient Agreement before approving the submittal or issuing or executing such change or agreement. The CITY also acknowledges that any change to any contract is considered a change order under FTA procurement requirements and requires the CITY to do an independent cost analysis as part of the change order process.

4.3

The Parties agree that the CITY will not move forward with a modification action without BMPO approval.

4.4

Upon completion of the respective contract requirements, the CITY agrees to separately issue "Final Acceptance" to each respective contractor for facilities design and construction acknowledging the Project's completion.

4.5

The CITY agrees to provide sufficient documentation to BMPO to demonstrate compliance with FTA and federal procurement requirements as a condition precedent to reimbursement

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ARTICLE 5

ACTIVITIES RELATED TO DESIGN AND CONSTRUCTION

5.1

Scope of Work — The Scope of Work contained in Subrecipient Agreement forms the basis for the CITY's award of contracts for the design and construction of the Project.

5.2

Sources and Uses of Funds — The total estimated cost of the Project is shown in the Subrecipient Agreement and Grant Application which was attached to the Subrecipient Agreement and is considered a part of this agreement. BMPO expects no additional funds to be available for the Project beyond that identified in the Subrecipient Agreement.

5.3

The CITY agrees to provide BMPO a copy of the Engineering and Construction contracts for review before final execution. Any Contractor selected by the CITY under its procurement procedures must be eligible to receive a contract under Federal and BMPO procurement rules or regulations and must not appear on any State or Federal list of suspended or ineligible contractors.

5.4

The Parties agree to cooperate in meeting all FTA and related Federal requirements and to strive to perform in a manner that does not delay the Project. BMPO will provide notice of changes to Federal regulations that affect the Project as soon as able.

5.5

Utilities — The Parties agree that utilities are a key element in delivering the Project on time, on budget, and within scope. The BMPO and the CITY will work together to ensure this Project risk is minimized; however, final responsibility for all coordination and relocation belongs to the CITY. The CITY agrees to be responsible for the full cost that exceeds allowable costs within the approved Project budget related to utility installation, adjustment, removal and/or relocation including but not limited to design and installation adjustment due to design of the Project, impacts to the contractor designing and constructing the Project resulting from the CITY's failure to install, adjust, remove, or relocate all utilities before the scheduled beginning of construction as reflected on the approved baseline schedule for the Project. The CITY agrees to perform these responsibilities consistent with applicable local, state, and Federal requirements and procedures, including FTA Buy America requirements. The CITY also agrees to provide to the BMPO the following as soon as available:

- a. A matrix listing all utilities that have been identified on the Project right-of-way and those that will impact or be impacted by the Project along with the CITY's planned action and schedule for installation, adjustment, removal, relocation, or other action.
- b. Certification, signed by the CITY Engineer, stating that the CITY has completed the adjustment of all

utilities that must be adjusted before construction begins.

5.6

The CITY agrees to be responsible for all additional costs related to differing site conditions discovered during construction, including, but not limited to, utilities, the existence or discovery of hazardous materials, and issues involving the Historical Commission or the State Historic Preservation Officer. The Parties agree to cooperate and coordinate with each other when dealing with all such issues.

5.7

The Parties acknowledge and agree that all approval actions on submittals, contract modifications or supplemental agreements authorized by this Agreement will be in accordance with the procedures and authority specified in the laws, charters, ordinances, regulations to which an individual Party is subject to or governed by.

5.8

Ownership of Documents — Upon completion or termination of this Agreement, all documents created or prepared by either Party will remain the property of that Party. All such documents, except those that may be privileged or otherwise may be legally withheld, will be made available to the other Party without restriction or limitation on their further use.

5.9

Surety — In addition to the evidence of Insurance the CITY provided as part of the Subrecipient Agreement Article 7, The CITY agrees to require the contractor awarded the Project contract to provide all required surety bonds, consistent with FTA levels and requirements. The CITY agrees to also ensure that the contractor carries insurance of the types and amounts needed to protect the interests of the CITY and BMPO. Before beginning construction, the CITY agrees to provide BMPO with a fully executed copy of a Certificate of Insurance and evidence of surety bond, or copies of policies or endorsements when necessary, verifying the existence of the required coverage for all persons and entities working on the Project. This coverage shall be maintained until all work is complete and for a three-year extended reporting period after completion. If coverage is not maintained, all work shall cease immediately, and the CITY and/or BMPO may recover damages allowed by law.

5.10

In addition to the representatives identified in the Subrecipient Agreement for different purposes, the CITY agrees, by written notification to BMPO, to designate an individual to act as its "CITY Project Representative." The CITY Project Representative will be available to and is authorized to represent and act on behalf of the CITY within the limits described in the written notification, and, will to the limits agreed to by the Parties, be involved in the Project execution on a day-to-day basis. BMPO will also appoint by written notification the designation of an individual to act as the "BMPO Project Manager." The BMPO Project Manager will be available to represent and act on behalf of the BMPO within the limits described in the written notification, and will, to the limits agreed to by the Parties, be involved in the Project developments on a day-to-day basis. Both Parties agree that it is important to keep both Project Managers apprised of all developments/issues that arise related to the Project.

5.11

Continuing Control and Maintenance — The CITY agrees to the continued operation of Project for its originally intended purpose for a minimum of the useful life of the assets. The CITY will provide annual reports to the BMPO on the condition of the assets through the useful life of the project and be responsible for repayment to FTA should the assets be taken out of service before the useful life is met. The CITY agrees to be responsible for maintenance of the Project and related utilities, facilities, and equipment after completion of the work.

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SAMPLE

ARTICLE 6

FEDERAL GOVERNMENT-WIDE AUDIT, ADMINISTRATIVE, AND COST PRINCIPLES REQUIREMENTS

The parties agree to the following limited and specific procedural modifications to the Subrecipient Agreement, ARTICLE 5, CONSIDERATION AND PAYMENT.

Section 5.3 of the Subrecipient Agreement is updated with the following reference information. The Office of Management and Budget issued a new [OMB Super Circular](#) (replacing Administrative, Cost Principles and Audit requirements for recipients of Federal funds). The US Department of Transportation adopted these changes in their regulations in 49 CFR Part 1201, superseding its previous administrative requirements contained in 49 CFR Part 18.

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ARTICLE 7

FUNDING AND REIMBURSEMENT PROCEDURES

7.1

The CITY agrees to provide to BMPO within fifteen (15) days of signing this agreement, an estimate of Project expenditures by month. With each invoice, the CITY will provide a graph showing the initial expected expenditure per month, actual expenditures, and an explanation of the variance between the two values. This will assist BMPO in monitoring the status of federal grant funds.

7.2

Consistent with Section 5.4 of the Subrecipient Agreement, BMPO agrees to reimburse the CITY upon submission of satisfactory, substantiated monthly progress and financial reports for costs associated with the preceding month. Each invoice must list total expenses by FTA budget category and include supporting receipts, progress reports, and any reasonable and necessary documentation determined by BMPO to comply with FTA requirements. Invoices will detail total Project expenditures requested to be reimbursed with FTA funds.

7.3

The CITY agrees to submit requests for reimbursement by submitting original itemized invoices with receipts in a form and containing all items required by the BMPO. If there is any question with any invoiced amount, authorized representatives of BMPO and the CITY will meet within five days to resolve any questions or disputes regarding the invoice.

7.4

The CITY agrees to remit to BMPO any excess payments made to the CITY and/or any costs disallowed by FTA within thirty (30) days of notification by the BMPO.

7.5

The CITY agrees that Project costs eligible for Federal participation must comply with all the following requirements, except to the extent that BMPO determines otherwise in writing. To be eligible for reimbursement, Project costs must be:

- a. Consistent with the Project Description, the approved Project budget, eligible expenses under [49 U.S.C. §5307](#) and other terms of the Grant Agreement for the Project;
- b. Necessary in order to accomplish the Project;
- c. Reasonable for the goods or services purchased;
- d. Actual net costs to the CITY (i.e., the price paid minus any refunds, rebates, or other items of value received by the CITY that have the effect of reducing the cost actually incurred, excluding program income);
- e. Incurred for work performed after the Effective Date of the Grant Agreement, unless BMPO determines otherwise in writing;
- f. Documentation that meets FTA and BMPO reimbursement requirements;
- g. Treated consistently in accordance with accounting principles and procedures consistent with the [OMB Super Circular](#), approved by BMPO, and with accounting principles and procedures approved by the CITY for its third-

party contractors and subrecipients.

7.6

All references to OMB regulations contained in the Subrecipient Agreement are updated to reflect the [OMB Super Circular](#) (2 CFR Part 200) and associated USDOT Regulations and requirements

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ARTICLE 8
INDEMNIFICATION

To the extent permitted by law, BMPO, and the CITY agree that each party is responsible for its individual acts and deeds as well as the acts and deeds of their respective contractors, employees, representatives and agents and each party agrees that it shall indemnify, defend and hold each and every other party harmless from and against all claims, damages, lawsuits, judgments, costs, attorney's fees and expenses directly arising out of or as a direct result of any such deeds or acts; provided, however, that nothing in this Agreement shall be interpreted as a waiver of governmental immunity on behalf of any of the parties.

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SAMPLE

ARTICLE 9

TERM

- 9.1 This Agreement shall be effective upon execution by both parties and shall continue in full force and effect until City performs all obligations and responsibilities, with respect to the funds set forth in Exhibit "A", imposed on BMPO by FTA for receipt of federal funds under the Section 5307 grant for the Project or, whichever occurs first.
- 9.2 The parties hereto may extend this Agreement by mutual consent in writing prior to the expiration of the Term. This provision in no way limits either party's right to terminate this Agreement at any time during the Term.

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SAMPLE

ARTICLE 10
CONSIDERATION AND PAYMENT

10.1

The BMPO shall have no obligation to independently fund the costs of the Project.

10.2

Reimbursement of the BMPO's and City's expenses for the Project funded under the Section 5307 grant shall be subject to the cost principles set forth in Part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Award at the following links:

- i. (<https://www.gpo.gov/fdsys/granule/CFR-2017-title2-vol1/CFR-2017-title2-vol1-part200>);
- ii. (<https://www.gpo.gov/fdsys/pkg/CFR-2017-title2-vol1/pdf/CFR-2017-title2-vol1-part200.pdf>);
[and The Federal Register at: \(https://www.federalregister.gov/documents/2017/05/17/2017-09909/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards\)](https://www.federalregister.gov/documents/2017/05/17/2017-09909/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards);

as well as the applicable provisions of the Section 5307 grant. The BMPO agrees to reimburse City for its expenditures that are allowable under the Project grant. The BMPO shall charge costs directly associated with the BMPO's oversight of the Project.

10.3

Public outreach communication, and project/design management associated with completion of this milestone shall be documented and an allowable cost shall be made to the City under this milestone.

Completion of the construction phases will be deemed to have occurred when the City submits all receipts, approved permits, certificate of completion, if any, copies of all permits with all required signoffs, and all other necessary documentation indicating the construction phase has been completed in a satisfactory manner. Final required sign-off shall include a professional engineer's signing and sealing that the Project is complete and operational, in substantial conformance with the plans and specifications.

At the completion of the Project, the CITY shall provide verified actual costs satisfactorily demonstrated to have been expended by the City for completion of the Project, in an amount not to exceed. Upon satisfactory review and approval of all required documentation from the City, the BMPO shall pay the balance of the total contract amount after the costs reimbursed for the preceding milestones. Public Outreach, communication, and project/design/construction management associated with completion of this milestone shall be documented and an allowable cost under this milestone.

10.4

Upon receipt of City's properly documented invoice BMPO shall pay City the applicable federal share of the invoice within 30 days. City's invoice shall include evidence that City has paid its local share contribution, if applicable, payroll records and invoices from City's contractor(s) and proof of payment to contractor(s) to verify that City has incurred the costs set out in its invoice. The BMPO reserves the right to require City to submit additional reasonable documentation to verify that City has incurred the costs set out in its invoice and that the amount of the invoice does not exceed the applicable federal share of the allocation of Section 5307 grant funds, less the BMPOs administrative costs under the Project grant.

10.5

If BMPO disputes any items on an invoice for a reasonable cause, BMPO may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions shall be documented to City and the parties agree to timely meet to resolve any such disputes.

10.6

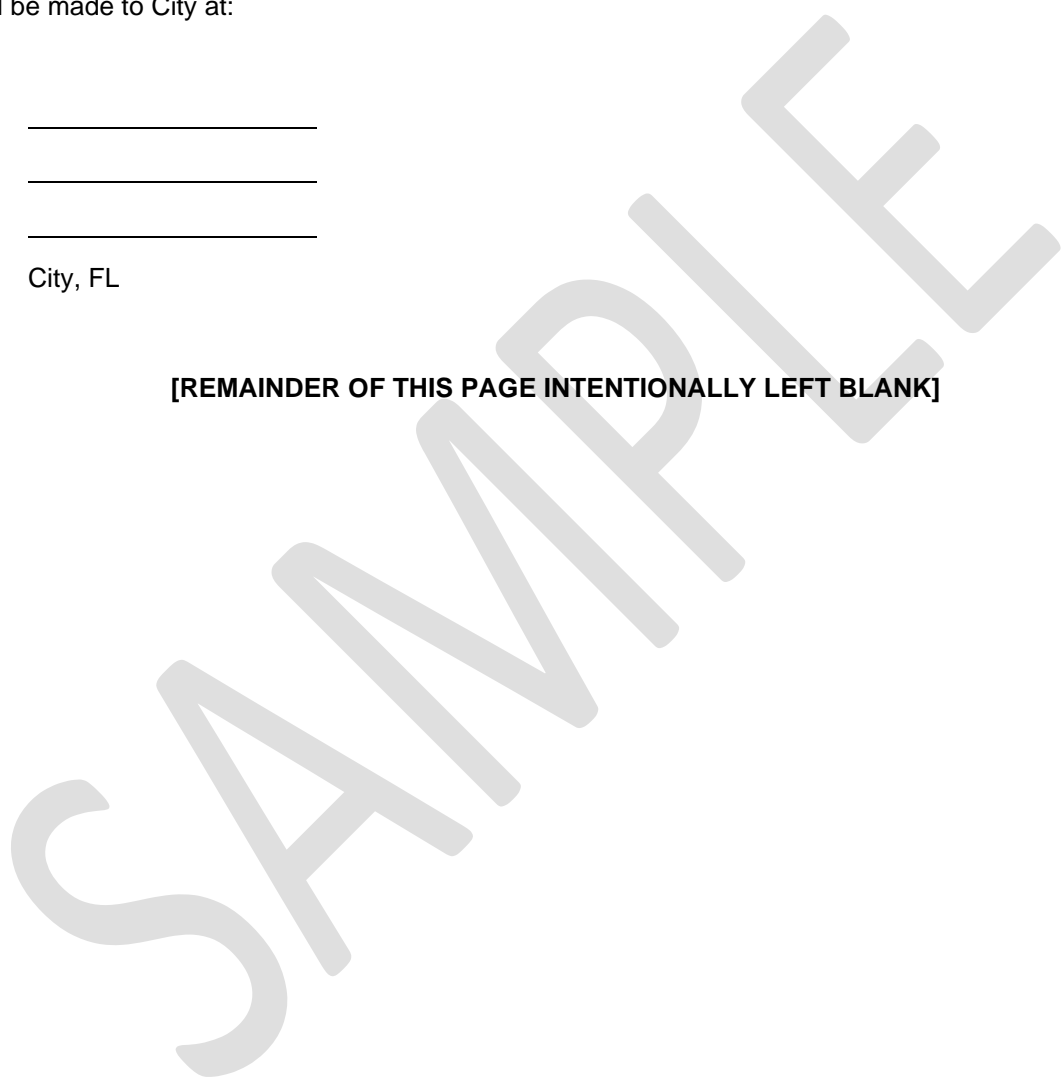
The BMPO's obligation to provide reimbursement to City shall be limited to the availability of funds to BMPO from FTA which are specifically earmarked for the Project. In the event that FTA shall deny any of BMPO's request for payments relating to the Project, or if FTA shall request the return of any funds relating to the Project that have been previously paid, City shall, within sixty (60) days of receiving notice from BMPO of FTA's denial or request for return of funds already paid, return to BMPO the funds that FTA has declined to reimburse or requested to be returned. City's requirement to return funds shall include the payment of any interest or penalties required by FTA.

10.7

Payment shall be made to City at:

City, FL

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ARTICLE 11

INSURANCE

City is an entity subject to Section 768.28, Florida Statutes, and City shall furnish the BMPO with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

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SAMPLE

ARTICLE 12
TERMINATION

12.1

This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach.

12.2

This Agreement may be terminated for cause for reasons including, but not limited to, City's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

12.3

Should either party involuntarily fail to perform any of their respective obligations pursuant to this Agreement, this Agreement may be terminated.

12.4

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

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ARTICLE 13

MAINTENANCE OF RECORDS/AUDITS

13.1

City shall maintain books, records, documents, and other evidence directly pertinent to work under this Agreement in accordance with generally accepted accounting principles and practices. City shall also maintain for a period of three (3) years from the latter of the date of Section 5307 grant close-out or expiration of this Agreement the financial information and data used by City in the preparation or support of the proposed or actual costs submitted for reimbursement under this Agreement. City agrees to permit the BMPO, FTA, the U.S. DOT Secretary and the U.S. Comptroller General, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records and to conduct performance and/or financial audits of City books, records and accounts pertaining to the Section 5307 grant expenditures for this Project.

13.2

City shall be responsible for meeting the audit requirements of Part 200 – Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Award (<https://www.gpo.gov/fdsys/granule/CFR-2017-title2-vol1/CFR-2017-title2-vol1-part200>), and any further revision or supplement thereto. City agrees that the audit will be conducted in accordance with U.S. Government Accountability Office (U.S. GAO) "Government Auditing Standards." Upon the BMPO's request, City must submit a copy of its audit, completed in accordance with the above-described requirements, within 30 days after completion of the audit, but no later than one year after the end of the audit period.

13.3

City and any of its contractors or subcontractors shall preserve and make available, at reasonable times for examination and audit by the 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, as may be amended from time to time, 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. 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 City to be applicable to City's and its subcontractors' records, City and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by City or its subcontractors.

13.4

Failure or refusal by the City to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the BMPO.

Section 119.0701(2)(a), Florida Statutes

IF CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Custodian of Records: David Clark
Mailing address: 100 West Cypress Creek Road, Suite 650. Fort Lauderdale, Florida 33309 Attn: BMPO
Telephone number: (954) 876-0043
Email: Clarkd@browardmpo.org

ARTICLE 14
NONDISCRIMINATION

14.1

In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 52 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S. C. Section 12132, Federal transit law, 49 U.S.C. Section 5332, and implementing regulations; AUTHORITY will not discriminate against any employee, applicant for employment, or contractor hired, or any passenger provided transit service because of race, color, religion, national origin, ancestry, sex, age, or disability.

14.2

Contract Assurance: Neither City nor any of its contractors or subcontractors may discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. City shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this US Department of Transportation-assisted Agreement. Failure by City to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or any other remedy allowed by law.

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ARTICLE 15
MISCELLANEOUS

11.1

THIRD PARTY OBLIGATIONS / BENEFICIARIES

- 11.1.1 City shall be liable to third parties with whom it enters into contracts to effectuate the purposes of the Section 5307 grant for the Project. City shall pay directly such parties for all amounts due under said contracts consistent with the Florida's Prompt Payment Act.
- 11.1.2 Neither City nor the BMPO intends to directly or substantially benefit a third party by 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 right or claim against either of them based upon this Agreement.

11.2

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 sent by commercial express carrier with acknowledgement of delivery, 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:

For City:

With a copy to:

For BMPO:

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
200 East Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

11.3

ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest created herein shall be assigned, transferred, or encumbered without the prior written consent of the other party. The references herein to the Federal Transit Administration or FTA shall include any successor agency or department of the United States Government.

11.4

COMPLIANCE WITH LAWS

Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

11.5

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 CITY or the BMPO elect 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.

11.6

JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

11.7

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 Articles 1 through 11 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 11 shall prevail and be given effect; provided, however, anything in this Agreement to contrary, the Master Agreement and all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

11.8

JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, 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, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, the BMPO AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.9

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 and executed by the City of City Commission and the BMPO Board or others delegated authority to or otherwise authorized to execute same on their behalf.

11.10

PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

11.11

INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. Exhibits "A" and "B" as referenced herein are incorporated into and made a part of this Agreement.

11.12

REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he/she is, on the date he/she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

11.13.

MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document

11.14

Number and Gender — Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

11.15

Severability and Legal Construction — In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision(s), and the Parties agree to amend this Agreement to cure any invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.

11.16

The Parties acknowledge that this Agreement is an "arm's length" agreement, entered into by BMPO and the CITY freely, without duress, coercion, or any undue influence. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision of this Agreement.

11.17

Merger and Amendment — This instrument constitutes the entire agreement of the Parties with respect to the matters contemplated herein and it may be modified or amended only in writing, signed by all Parties hereto.

11.18

Agreement — This Agreement amplifies the rights and responsibilities agreed to in the Subrecipient Agreement, attached to this Agreement.

11.19

Nondiscrimination — In its performance of this Agreement, BMPO and the CITY each warrant that it will not discriminate against any person on account of race, color, sex, religious creed, age, disability, ethnic or national origin, or veteran status.

11.20

No Waiver — Neither of the Parties shall be deemed, by any act or omission, to have waived any of its rights or remedies unless such waiver is in writing and signed by the waiving Party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: **CITY OF** through its CITY COMMISSIONERS, signing by and through its Mayor, authorized to execute same by Commission action on the _____ day of _____, 20, and **BROWARD METROPOLITAN PLANNING ORGANIZATION**, signing by and through its Chair and Executive Director, duly authorized to execute same.

"CITY"

CITY OF, a municipal corporation of the State of Florida

By: _____, MAYOR

This ____ day of _____, 20.

Approved By: _____

Attest:

By: _____
, City Clerk (SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of, Florida, only.

By: _____
, City Attorney

SUBRECIPIENT AGREEMENT BETWEEN BROWARD METROPOLITAN PLANNING ORGANIZATION AND THE CITY
OF FOR THE MOBILITY HUB PROJECT

“BMPO”

BROWARD METROPOLITAN
PLANNING ORGANIZATION

By _____

, Chair

By: _____

Gregory Stuart, Executive Director

____ day of _____, 20

____ day of _____, 20

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 PL