BRPC
Berkshire Regional Planning Commission

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Agreement
By and Between
Berkshire Regional Planning Commission
And

THIS AGREEMENT made as of the ---------- day of ----------, is by and between the Berkshire Regional Planning Commission (BRPC), hereinafter called the COMMISSION, and ----------, hereinafter called the CONTRACTOR.

WHEREAS, the COMMISSION has entered into an Agreement with ---------- to perform a BRTA Routes Analysis & Integration of On-Demand/ Microtransit Study.

WHEREAS, professional services relating to the implementation of the project are sought to assist the COMMISSION in the timely achievement of the project objectives.

NOW, THEREFORE THE PARTIES HERETO DO AGREE AS FOLLOWS:

1. ENGAGEMENT OF INDEPENDENT CONTRACTOR: Subject to the terms and conditions of this Agreement, the COMMISSION hereby engages the CONTRACTOR as an independent contractor to perform the services set forth herein and the CONTRACTOR hereby accepts the engagement.

2. SCOPE OF SERVICES: The CONTRACTOR shall provide the necessary services as described in their proposal dated----------(Attachment A). The CONTRACTOR shall perform its services in accordance with reasonable professional standards of skill, care, and diligence. Time is of the essence of this Agreement. The CONTRACTOR shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the CONTRACTOR in the preparation of work products, as reasonably determined by the COMMISSION, nor for any services made necessary by the fault or neglect of the CONTRACTOR.

   The Request for Proposal (RFP) dated ---------- and the proposal submitted by the CONTRACTOR in response to the RFP (the "proposal"), including any amendments or modifications thereto, are hereby incorporated into and made a part of this AGREMENT by reference and constitute the Scope of Services for this AGREMENT.

3. RESPONSIBILITY OF THE COMMISSION: The COMMISSION shall assume responsibility for assisting the CONTRACTOR insofar as possible for the purpose of efficiency and furnishing the CONTRACTOR with information needed to satisfactorily complete the services.

4. REPORTING: The CONTRACTOR will submit written reports to the COMMISSION on the status of professional services as specified in Attachment A, or at other times as required by an information request or reporting requirement by the Massachusetts Department of Transportation.

5. TIME OF PERFORMANCE: The services of the CONTRACTOR are to commence on or about ---

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----------, and shall be undertaken and completed in sequence as to assure their expeditious completion. All services required hereunder shall be completed no later than September 30, 2027.

6. COMPENSATION: The COMMISSION will pay the CONTRACTOR a total fee from project grant funds in an amount not to exceed **----------**, based on a mutually agreed upon invoice procedure. The COMMISSION's review, approval, acceptance or payment for Services under this Agreement shall not operate as a waiver of any rights under this Agreement and the CONTRACTOR shall be and remain liable to the COMMISSION for all damages incurred by the COMMISSION as the result of the CONTRACTOR's failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies of the COMMISSION provided for under this Agreement are in addition to any other rights or remedies provided by law. The COMMISSION may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counterclaim either during or after performance of this Agreement.

7. AVAILABILITY OF FUNDS: The compensation provided by this agreement is subject to the continued availability of funds for the Microtransit Feasibility Study, and to the continued eligibility of the COMMISSION to receive such funds. In absence of such funds, this Agreement shall be terminated immediately without liability of the COMMISSION for damages, lost profits, penalties, or other charges arising from early termination.

8. WITHDRAWAL OR TERMINATION: Either the COMMISSION or the CONTRACTOR may withdraw from this agreement for cause upon 15 days written notice, except that the COMMISSION may terminate the engagement of the CONTRACTOR immediately and without prior written notice if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written directives of the COMMISSION, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this AGREEMENT. In the event of termination or withdrawal, the CONTRACTOR will promptly deliver to the COMMISSION all Materials, including all documents, work papers, studies, calculations, computer programs, data, drawings, plans, specifications and other tangible work product or materials pertaining to the services performed under this Agreement to the time of termination, and thereupon the COMMISSION shall pay to the CONTRACTOR any unpaid and undisputed balance owing for services rendered prior to the date of termination. Any termination or withdrawal of this Agreement shall not affect or impair the right of the COMMISSION to recover damages occasioned by any default of the CONTRACTOR or to set off such damages against amounts otherwise owed to the CONTRACTOR.

9. AMENDMENTS: This agreement may be amended as agreed to in writing by the signatories hereto.

10. NON-DISCRIMINATION: The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin.

11. INDEMNIFICATION: To the extent allowable by law, the CONTRACTOR shall indemnify, defend, and hold the COMMISSION harmless from and against any and all suits, claims, demands, damages, losses, actions, causes of actions, costs and expenses, including attorneys' fees, or liability of every kind and description that the COMMISSION may incur or suffer resulting from, caused by or arising out of or in connection with the services performed or delivered under this Agreement by reason of acts, inactions, omissions, errors, negligence, reckless or intentional misconduct of the CONTRACTOR their agents or employees or breach of contractual duties to the COMMISSION by the CONTRACTOR, their agents or employees. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Agreement and shall survive the termination of this

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Agreement.

12. CERTIFICATE OF INSURANCE: The CONTRACTOR must provide the COMMISSION with a Certificate of General Liability Insurance, if applicable, and Worker's Compensation.

13. FORM W-9: The CONTRACTOR must provide the COMMISSION with a Request for Taxpayer Identification Number and Certification (W-9).

14. CONFLICT OF INTEREST: The CONTRACTOR shall adhere to the mandates of the Massachusetts Conflict of Interest Statute, M.G.L. c. 268A.

15. COPYRIGHT: No material prepared in whole or in part under this agreement shall be subject to copyright in the United States of America or in any other country. All material produced under the terms of this agreement is public property and cannot be copyrighted by either the CONTRACTOR or the COMMISSION.

16. SEVERABILITY: If any provision of this Agreement is held invalid, the remainder of the agreement shall not be affected thereby, and all other parts of this agreement shall nevertheless be in full force and effect.

17. ASSIGNMENT: This Agreement may not be assigned by either party.

18. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

19. LIMITED LIABILITY: No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of the COMMISSION shall be personally liable to the CONTRACTOR hereunder, for the COMMISSION's payment obligations or otherwise, the CONTRACTOR hereby agreeing to look solely to the assets of the COMMISSION for the satisfaction of any liability of the COMMISSION hereunder. In no event shall the COMMISSION ever be liable to the CONTRACTOR for indirect, incidental or consequential damages.

20. ENTIRE AGREEMENT: This Agreement represents the entire understanding of the parties with respect to the subject matter addressed herein and supersedes and cancels all previous agreements between the parties.

IN WITNESS thereof, the COMMISSION and the CONTRACTOR have executed this agreement as of the date above written.

COMMISSION:

By: _____ Date:
Laura Brennan
Executive Director

CONTRACTOR:

By: _____ Date:

Sample Contract

ATTACHMENT A

Scope of Work

Sample Contract

Attachment B

Payment Information

Name: _____

Street: _____

City/Town: _____, State, Zip code

Contact Name: _____

Contact email: _____

Contact telephone number: _____

Remit to Address if different than Contract:

Name: _____

Street: _____

City/Town: _____, State, Zip code

The CONTRACTOR will invoice monthly to BRPC, no later than seven calendar days after the last day of the month to be invoiced.

The invoices should include:

- Services Provided
- Actual hours spent and the agreed hourly rate.
- Mileage shall be eligible for reimbursement based on the current I.R.S. rate.
- Direct charges (Meeting/Training, Printing, Communication/Advertising, Equipment/Software, legal, Postage, and Supplies)
- Other direct costs incurred by the Contractor while in the service of BRPC shall be eligible for reimbursement for the actual cost, as shown by a receipt, with prior approval from BRPC.

The total cost of the invoices from the Contractor shall not exceed ----------.

For BRPC Use Only

Dept# , code and task if applies_____

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