

CITY OF HIGH POINT

AGENDA ITEM



TITLE: High Point Metropolitan Planning Organization (MPO) Two-Party Agreement for Transportation Planning Activities and Fee Reimbursement	
FROM: Andrew Edmonds, Transportation Planning Administrator	MEETING DATE: April 1, 2024
PUBLIC HEARING: n/a	ADVERTISED DATE/BY: n/a
ATTACHMENTS: High Point MPO Agreement with North Carolina Department of Transportation	

PURPOSE: Approval of the City of High Point and North Carolina Department of Transportation (NCDOT) Two-Party Agreement to carry out planning activities and receive fee reimbursement of federal funds.

BACKGROUND: As the Lead Planning Agency (LPA) for the High Point Metropolitan Planning Organization, the City of High Point has been designated as the administrative entity to coordinate transportation planning for the MPO area, and to be the recipient of its share of planning funds as determined by policy approved by the North Carolina Department of Transportation. As the LPA, the City is responsible for carrying out the provisions of Title 23 United States Code Section 134 and Chapter 136, Article 3A, Section 136-66.2 of the General Statutes of North Carolina and any subsequent amendments and implementing regulations. In return, the City will request Planning fund reimbursement for eligible planning task items as outlined in the MPO's Unified Planning Work Program.

This agreement replaces an outdated agreement but has no substantial changes to the old agreement.

BUDGET IMPACT: There is no budgetary impact.

RECOMMENDATION/ACTION REQUESTED: Staff recommends that City Council approve the updated agreement and allow the appropriate city staff or officials to execute all necessary documents.



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AGREEMENT OVERVIEW

NORTH CAROLINA
DAVIDSON COUNTY

DATE: 12/11/2023

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

CFDA: 20.205

AND

CITY OF HIGH POINT

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other parties to this Agreement, as further defined in this Agreement.

SCOPE OF PROJECT (“Project”): The purpose of this agreement is to perform the planning work as required by Title 23 United States Code, Section 134, in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs, for the purposes established in them.

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: Remains in effect until revised or either Party decides to terminate

This **Agreement** is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the City of High Point, a Municipal Corporation, hereinafter referred to as the **Municipality**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

I. WHEREAS STATEMENTS

WHEREAS, Title 23 United States Code, Section 134 – Metropolitan Transportation Planning, paragraph (a) states it is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of the people and freight, foster economic growth and development with and between States and urbanized areas, and take into consideration resiliency needs while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes and to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations; and,

WHEREAS, the **Municipality** has been designated as the Lead Planning Agency (LPA) for the High Point Metropolitan Planning Organization (MPO) to be the administrative entity and to coordinate transportation planning in the MPO area, and to be the recipient of its share of planning funds as determined by the policy approved by the **Department**; and,

WHEREAS, the MPO is responsible for carrying out the provisions of Title 23 United States Code (USC), Section 134 and Chapter 136, Article 3A, Section 136-66.2 of the General Statutes of North Carolina (NCGS) and any subsequent amendments and implementing regulations; and,

WHEREAS, Title 23 USC, Section 104(b)(5)(D) and 104(b)(6) provides for the apportionment of highway funds for metropolitan planning organizations responsible for carrying out section 134 in the State, which may be referred to as Planning (PL) funds; and,

WHEREAS, when applicable, Title 23 United States Code, Section 133(b) provides that a state may obligate funds apportioned to it under Section 104(b)(5) for the Surface Transportation Block Grant (STBG) to be used for the following eligible use: Surface Transportation Planning Programs (23 USC 133(b)(10)); and,

WHEREAS, the **Department** is required to administer the reimbursement of funds on behalf of the Federal Highway Administration to the MPO, as determined by a distribution formula developed by the **Department** in consultation with the MPOs; and,

WHEREAS, the work performed by the MPO will be in accordance with an approved annual unified planning work program (UPWP), hereinafter referred to as the “UPWP”, and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the governing board of the **Municipality** has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.2 and 136-200 – 136-202 for the

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development of coordinated transportation system and the development, government, and administration of MPOs;

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the **Parties** do hereby covenant and agree, each with the other, as follows:

II. GENERAL PROVISIONS

A. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All **Parties** to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

B. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a Supplemental Agreement.

C. MPO TO PERFORM ALL WORK

The **Municipality** shall be responsible for administering all work performed and for certifying to the **Department** that all terms set forth in this Agreement are met and adhered to by the MPO, the **Municipality** and/or its contractors and agents. The **Department** will provide technical oversight to guide the **Municipality**. The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

D. PERSON IN RESPONSIBLE CHARGE

- i. The **Municipality** shall designate a person or persons among MPO staff to be in responsible charge of the MPO Program. The person, or persons, shall ensure that:
 1. The MPO Program and Planning Work Program (PWP) are delivered;
 2. MPO Program activities, including those dealing with cost and time, are administered;
 3. Financial processes, transactions, and documentation are reviewed;
 4. Direction is provided for program staff, agency, or consultant, to carry out program administration and contract oversight, including proper documentation; and,
 5. The qualifications, assignments and on-the-job performance of the **Municipality** and consultant staff are monitored.

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- ii. The person in responsible charge must be a full-time employee of the **Municipality** but the duties may be split among several employees, if necessary.

E. COMPLIANCE WITH STATE/FEDERAL POLICY

The **Municipality** and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures (stated both in this Agreement and in the Department's guidelines and procedures), including the most recent version of the Local Programs Management Handbook and Transportation Planning Division (TPD) procedures (See Appendix A for references) for administering the MPO planning process. Unless the **Department** provides written notice of a change in the MPO program policies or procedures, the **Municipality** will be responsible for complying with all policies and procedures published at the beginning of the then-current fiscal year.

F. FAILURE TO COMPLY

Failure on the part of the **Municipality** to comply with any of the provisions of this Agreement will be grounds for the **Department** to terminate this Agreement and, if applicable, seek repayment of any ineligible reimbursed funds, provided, however, that the **Department** shall provide the **Municipality** notice of noncompliance with any policy or procedure of the **Department** or federal funding requirements and the **Department** shall not terminate the Agreement if the **Municipality** cures or commences a cure in good faith of such noncompliance within 30 days.

III. SCOPE OF PROGRAM

The **Municipality** and the **Department** shall, in cooperation with other participating agencies, perform the planning work as required by Title 23 United States Code, Section 134, in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs, for the purposes established in them. The work to be accomplished in a specific fiscal year shall be the work that is identified in the annual Unified Planning Work Program (UPWP) prepared by the **Municipality** and approved by the policy board of the MPO, the **Department**, the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA).

IV. FUNDING

- i. The **Department** will allocate to the **Municipality** a distribution of funds in accordance with the funding source and distribution method approved by the **Department**. The **Department** will notify the MPO of the allocated funding on an annual basis prior to the submission of a draft UPWP.

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- ii. Funding sources could include Metropolitan Planning (PL), State Planning and Research (SPR), State Funds, Surface Transportation Block Grant – Direct Attributable (STBG-DA), or other funding sources as approved and/or allocated by FHWA. Currently the MPO program, with the exception of the local match, is funded with Metropolitan Planning (PL), PL set-aside for safe and accessible transportation options, (and if designated as a TMA, the MPO would also be allocated STBG-DA funds). If funding sources change the **Municipality** will be notified in writing of the funding change and eligibility requirements. At least a 90-day notice will be provided for a change in funding source that results in a reduction of funding.
- iii. The **Municipality** shall use its share of the Section 104(b)(5)(D) and 104(b)(6) planning funds and required matching funds for carrying out provisions of Title 23, United States Code, Section 134, provisions of NCGS 136-66.2 and 136, Article 16, and related UPWP work elements.
- iv. Subject to compliance by the **Municipality** with the provisions set forth in this Agreement and the availability of federal funds, the **Department** shall participate annually in a maximum of eighty percent (80%) of the total approved eligible costs covered under this Agreement up to the amount allocated for the fiscal year. For PL and STBG-DA funds (as and if applicable to the MPO), the MPO shall provide a minimum twenty percent (20%) match and all costs that exceed the total annual budget amount.
- v. The following 2 paragraphs regarding SPR funds and state match only applies for those instances where the Municipality is allocated such funds in a given fiscal year:
 - 1. Subject to compliance by the Agency with the provisions set forth in this Agreement and the availability of federal funds, if the MPO is allocated State Planning and Research (SPR) funds in a given fiscal year, the **Department** shall participate annually in a maximum of eighty percent (80%) of federal SPR funds for the total approved eligible costs covered under this Agreement up to the federal SPR funds amount allocated for the fiscal year. The **Department** shall further provide State funds for a portion of the local match in accordance with NCGS 136-214, provided that this dedicated funding source is provided and available to the **Department** for this use. These State funds the **Department** provides shall be either seventy-five percent (75%) or fifty percent (50%) of the total local match, depending on the Tier classification of the MPO (at the time the funds were awarded/allocated to the MPO) and fund availability.
 - 2. The Agency shall provide a minimum of locally derived, non-federal matching funds amount of twenty-five percent (25%) or fifty percent (50%) of the total local match in accordance with NCGS 136-214, which may vary each fiscal year. At the time the **Department** awards any such funding, the **Department** shall, on a yearly basis, review the MPO's Tier designations as provided by the Department of Commerce and

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adjust, as necessary, the **Department's** and MPO's percentage of local match and State-funded local match assistance in accordance with the provisions set forth in NCGS 136-214.

- vi. Should additional specific use or special studies funding be awarded, the award letter will provide an updated allocation. Additional specific use or special studies funds must be spent in accordance with the terms of those programs and funding sources.

V. PERIOD OF PERFORMANCE

This Agreement will become effective when fully executed and will remain in effect until revised or until the MPO planning funds are no longer available or until such time as the Agreement is terminated by the **Parties** hereto. The Agreement may be terminated by either party by giving 90 days written notice to the other party (see Termination Provision for more information).

VI. FUNDING AUTHORIZATION

The **Department** will provide approval of the UPWP in accordance with TPD policies and procedures. The **Department** will seek funding authorization from FHWA for the approved annual UPWP prior to the start of the state fiscal year (SFY). The **Department** will notify the **Municipality** in writing once the funds have been federally authorized. Any costs incurred by the **Municipality** prior to federal authorization, submission of an adopted UPWP and the start of the SFY shall not be eligible for federal or state reimbursement. The **Municipality** shall not initiate any work prior to submitting an adopted UPWP and the start of the SFY.

VII. PROCUREMENT OF MATERIALS AND SERVICES

A. GOODS OR MATERIALS

In accordance with Title 2 Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR 200) and the exemptions obtained by the US Department of Transportation, codified at 2 CFR 1201, the **Municipality** shall follow state-approved procedures when procuring goods and materials.

B. PROFESSIONAL SERVICES

- i. When procuring professional services, the **Municipality** must adhere to the following as applicable:
 - 1. TPD's Procurement of Consultant Services by MPO procedure;
 - 2. The **Department's** Small Professional Service Firm (SPSF) Program Guidelines;

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3. The **Department's** Policies and Procedures for Procurement and Administration of Major Professional or Specialized Services Contracts;
4. 23 CFR 172 – Procurement, Management, and Administration of Engineering and Design Related Services;
5. 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

and any other pertinent federal regulation.

- ii. The **Municipality** shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- iii. All Professional Services Firms shall be pre-qualified by the **Department** in the Work Codes advertised.
- iv. A pre-negotiation audit will be conducted by the **Department's** Office of Inspector General. The **Municipality** shall not execute a consultant contract until the **Department's** review has been completed.
- v. If the **Municipality** fails to comply with these requirements, the **Department** will withhold funding until these requirements are met.

VIII. CONDITIONS OF ACCEPTANCE OF THE PROGRAM BY THE DEPARTMENT

The annual UPWP shall be reviewed and approved by the **Department**. Federal funds shall be subject to federal eligibility rules and FHWA review.

IX. PROGRAM / PRODUCT DEVELOPMENT, DESIGN, AND DELIVERY

A. UPWP

- i. The **Municipality** and/or its agent, shall carry out the responsibilities of the MPO as specified in the annual UPWP.
- ii. The **Municipality** shall perform the planning work as required in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs for the purposes established in them. The work to be accomplished in a specific fiscal year shall be that work identified in the approved UPWP.

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1. The **Municipality** shall perform the planning work as required in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs for the purposes established in them. The work to be accomplished in a specific fiscal year shall be that work identified in the UPWP approved by the MPO, the **Department**, FTA and FHWA.
 2. The provisions of all existing directives, procedures, agreements, plans, or programs related to Title 23, United States Code, Section 134, or any subsequent interpretation or revisions of the above by FHWA shall apply in the performance of all work under this Agreement.
 3. All work shall be performed in accordance with the **Department's** procedures and guidelines.
- iii. Said documentation shall be submitted to the **Department** for review and approval, where applicable. The **Municipality** shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required. The **Municipality** shall advertise and conduct any required public hearings.

B. FISCAL CONSTRAINT OF TRANSPORTATION PROGRAMS

- i. The State, the MPO, and providers of public transportation are responsible for financial planning that demonstrates how MTP's and TIP's can be implemented consistent with principles of fiscal constraint. Federal requirements (23 CFR 450.314(a)) direct that specific provisions be agreed upon for cooperatively developing and sharing information for development of financial plans to support the MTP (23 CFR 450.324) and metropolitan TIP (23 CFR 450.326), as well as development of the annual listing of obligated projects (23 CFR 450.334).
1. To support the development of the financial plan for the MTP, the **Department** shall provide the MPO with a listing of the most recent 10-year historical funding for the Counties located within the MPO boundary categorized by funding source. The MPO will review the historical information and extrapolate the funding trends for the MTP's planning horizon while considering other factors that may affect a reasonable funding forecast. The MPO shall add any local or private funding sources reasonably expected to be available during the planning horizon. If the MPO recommends any alternative financing strategies to fund the projects and programs in the MTP, they shall be identified and included in the MTP. In the case of new funding sources, strategies for ensuring their availability shall be identified and documented. If a revenue source is subsequently removed or substantially reduced (i.e., by legislative or administrative actions), the MPO will not act on a full update or amended MTP and/or TIP that does not reflect the changed revenue situation. Updates or amendments to a TIP or the

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STIP are acceptable as long as the changes don't involve the removed or reduced sources of funding.

2. Annual Obligation Report: Within 90 days after the close of a federal fiscal year, NCDOT shall provide the MPO with the information needed to be included in the annual listing of obligated projects. The MPO shall publish the annual listing of obligated projects on their web site and in accordance with any other procedures outlined in their Public Participation Plan to ensure adequate access by the public and other interested stakeholders. To the extent possible, this report will contain the projects (including investments in pedestrian walkways and bicycle transportation facilities) for which federal highway or transit funds were obligated in the preceding program year. It shall include all federally funded projects authorized, including those revised to increase obligations in the preceding program year. At a minimum, it shall include:
 - a. TIP project description and implementing agency information,
 - b. Identify for each project, the amount of Federal funds requested in the TIP/STIP,
 - c. the Federal funding that was obligated during the preceding year,
 - d. and the Federal funding remaining and available for subsequent years.

X. REIMBURSEMENT

A. SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement shall be included in an approved annual UPWP and shall not exceed the total funding allocation provided by the **Department**. The **Municipality's** share of the MPO planning funds will be reimbursed upon submission of an invoice and any documentation required by the **Department's** procedures (see Appendix A) for administering the MPO planning process.

B. REIMBURSEMENT GUIDANCE

The **Municipality** shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Said reimbursement shall also be subject to the **Department** being reimbursed by the Federal Highway Administration and subject to compliance by the **Municipality** and the MPO with all applicable federal policy and procedures.

C. REIMBURSEMENT LIMITS

Work Performed Before Notification

- i. Any costs incurred by the **Municipality** prior to federal authorization, submission of an adopted UPWP and the start of the annual UPWP's SFY shall not be eligible for federal reimbursement.

No Reimbursement in Excess of Approved Funding

- ii. At no time shall the **Department** reimburse the **Municipality** costs that exceed the amount of funding allocated. The **Department** shall not reimburse the **Municipality** for costs that exceed the total amount approved in the UPWP.

Unsubstantiated and Ineligible Costs

- iii. The **Municipality** agrees that they shall bear all costs for which they are unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the **Department**. The **Municipality** is responsible for accounting and tracking time charged for eligible activities covered by this agreement vs non-eligible activities to ensure no improper expenditure, invoicing, and use of funds for non-eligible activities. Non-eligible activities are the sole financial responsibility of the **Municipality**.

Work Performed by the Department

- iv. All work performed by the **Department** in processing the reimbursement of funds to the **Municipality** shall be assessed a fee, which is estimated to be approximately three percent (3%) of the total expenditures but is subject to change on a yearly basis. The **Municipality** shall program these charges within the annual UPWP and is responsible for collecting the non-federal match.
- v. Upon completion of the fiscal year, the **Department** shall bill the **Municipality** the amount equal to twenty percent (20%) of the actual total assessed fee for the fiscal year. The **Municipality** shall reimburse the **Department** within sixty (60) days of invoicing by the **Department**. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

D. INVOICING THE DEPARTMENT

Invoicing

- i. The **Municipality** is responsible for submitting invoices and meeting the reporting requirements in accordance with the TPD and the **Department's** guidelines and procedures. The invoice shall include a statement and certification by the Finance Officer of the **Municipality** certifying the expenses.

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Procedure

- ii. The **Municipality**, on behalf of the MPO, shall bill the **Department** for eligible costs in accordance with the **Department's** guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the **Department**. By submittal of each invoice, the **Municipality** certifies that it has adhered to all applicable state and federal laws and regulations. All invoices must be submitted and processed for payment as specified in applicable policies and procedures.

Internal Approvals

- iii. Reimbursement to the **Municipality** shall be made upon approval of the invoice by the **Department's** Financial Management Division.

Invoice Frequency

- iv. The **Municipality** should invoice the **Department** quarterly for work accomplished. If the **Municipality** is unable to invoice the **Department**, then they must provide an explanation and the **Department** may grant an extension. Failure to submit invoices within a six-month time period may result in de-obligation of funds.

XI. REPORTING REQUIREMENTS AND RECORDS RETENTION

A. EVALUATION REPORTS

The **Municipality** is responsible for submitting quarterly and final reports as specified in the TPD's *MPO Administration – Process MPO Invoices* procedure (most recent version), currently located at <https://connect.ncdot.gov/projects/planning/pages/TPManualsMPO-RPO.aspx>.

B. RECORDS

The **Municipality** and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the **Municipality** shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the **Department's** Financial Management Section, the Federal Highway Administration, or any authorized representatives of the State and Federal Government.

XII. OTHER PROVISIONS

A. REFERENCES

- i. It will be the responsibility of the **Municipality** to follow the current and/or most recent published edition of Federal references, websites, specifications, standards, guidelines, recommendations, regulations and/or North Carolina General Statutes stated in this Agreement.
- ii. On the fifth anniversary of the execution of this Agreement, the **Parties** will review the terms of this Agreement to ensure that this Agreement is consistent with federal and state regulations:
 1. Federal Transportation Authorization legislation;
 2. 2 CFR 200;
 3. NCGS 136 Article 16;
 4. Funding source, or amount;
 5. SPR eligibility.

B. TITLE VI - CIVIL RIGHTS ACT OF 1964

[for Contractor, read Municipality]

- i. The provisions of this section related to United States Department of Transportation (US DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21, 23 United States Code (U.S.C.) 140 and 23 CFR part 200 (or 49 CFR 303, 49 U.S.C. 5332 or 49 U.S.C. 47123) are applicable to all NCDOT contracts and to all related subcontracts, material supply, engineering, architectural and other service contracts, regardless of dollar amount. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.
 1. During the performance of this Agreement, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
 - a. **Compliance with Regulations:** The contractor or subrecipient (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

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- b. **Nondiscrimination:** The contractor or subrecipient, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor or subrecipient for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- d. **Information and Reports:** The contractor or subrecipient will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of a contractor's or subrecipient's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding payments to the contractor under the contract until the contractor complies; and/or
 - ii. cancelling, terminating, or suspending a contract, in whole or in part.
- f. **Incorporation of Provisions:** The contractor or subrecipient will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is

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threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

2. During the performance of this Agreement, the contractor or subrecipient, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- a. 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.
- b. 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);
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d. 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;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f. 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);
- g. 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);
- h. 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

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entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

- i. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination 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;
 - k. 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);
 - l. 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).
3. NCDOT Title VI Nondiscrimination Program. 23 CFR 200.5(p): The North Carolina Department of Transportation (NCDOT) has assured the US DOT that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, income-level, sex, age, or disability, (or religion, where applicable) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:
- a. During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. USDOJ Title VI Legal Manual, VI(F);
 - b. Subrecipients (e.g. cities, counties, LGAs, MPO/RPOs) may be required to prepare and submit a Title VI Program to NCDOT, which may include Title VI Nondiscrimination Assurances and/or agreements. Subrecipients must also

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ensure that their contractors and subrecipients comply with Title VI. 23 CFR 200.9(b)(7); and

- c. If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. 23 CFR 200.9(b)(15).

C. TITLE VII - EQUAL EMPLOYMENT OPPORTUNITY

[For LPA, read Municipality]

- i. **Selection of Labor** – During the performance of this AGREEMENT, the LPA will not discriminate against labor from any other STATE, possession or territory of the United States.
- ii. **Employment Practices** – During the performance of this AGREEMENT, the LPA agrees to comply with all applicable provisions of 49 CFR Part 21, 23 CFR Part 200 and Part 230 and the Civil Rights Act of 1964 as amended, and agree as follows:
 - 1. The LPA will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, age, handicap and/or disability. The LPA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, age, handicap or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this nondiscrimination clause.
 - 2. The LPA will, in all solicitations or advertisements for employees placed by or on behalf of the LPA, state that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, national origin, sex, age, handicap and/or disability.
 - 3. The LPA will send to each labor union or representative of workers with which the LPA has a collective bargaining agreement or other contract or understanding, a notice to be provided by the STATE, advising the labor union or workers' representatives of the LPA'S commitments under this AGREEMENT and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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4. The LPA will comply with all provisions of U.S. Presidential Executive Order No. 11246 as amended by Executive Order 11375, and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60).
5. The LPA will furnish all information and reports required by Executive Order No. 11246 as amended by Executive Order 11375, and other Orders, and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60), and will permit access to his books, records, and accounts by the U.S. Secretary of Labor or Labor Officials for purposes of investigations to ascertain compliance with such rules, regulations and orders.
6. In the event of the LPA's noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of rules, regulations, or orders referenced hereinabove this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and the LPA may be declared ineligible for further Government contracts or Federally-assisted construction agreements in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375 and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned U.S. Presidential Executive Order and regulations or as otherwise provided by law.
7. The LPA will include the provisions of the paragraphs in this section of this AGREEMENT in every subcontract or purchase order so that such provisions will be binding upon each subconsultant or vendor unless specifically exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to Section 204 of the U.S. Presidential Executive Order No. 11246.

D. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

E. IMPROPER/EXCESS USE OF FUNDS

Where either the **Department**, FHWA, or any other auditor determines that the funds paid to the **Municipality** on behalf of the MPO are not used in accordance with the terms of this Agreement or deemed ineligible for reimbursement by Federal funds, the **Department** will bill the **Municipality** for the ineligible expenditures.

F. TERMINATION OF AGREEMENT

The Agreement may be terminated by either party by giving 90 days written notice to the other party. Eligible expenditures by the **Municipality** prior to the 90th day after notice of termination is given will be reimbursed with the available funding. Reimbursement shall not exceed the annual funding allocation.

G. AUDITS

In accordance with 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the **Municipality** shall arrange for an annual independent financial and compliance audit of its fiscal operations. The **Municipality** shall furnish the **Department** with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the **Municipality’s** fiscal year ends.

H. REIMBURSEMENT BY MUNICIPALITY

For all monies due the **Department** as referenced in this Agreement, reimbursement shall be made by the **Municipality** to the **Department** within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

I. USE OF POWELL BILL FUNDS

If the **Municipality** fails for any reason to reimburse the **Department** in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the **Department** to withhold so much of the **Municipality’s** share of funds allocated to **Municipality** by NCGS 136-41.1, until such time as the **Department** has received payment in full.

J. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the **Parties** and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

XIII. ADDITIONAL PROVISIONS

A. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

B. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

C. AGREEMENT FOR IDENTIFIED PARTIES ONLY

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

D. OTHER AGREEMENTS

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

E. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

F. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

G. AUTHORIZATION TO EXECUTE

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

H. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or **Department** and that it will

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not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

I. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

J. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

K. DOCUSIGN

The **Department** and **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **Municipality**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or **Municipality's** signature as if actually signed by **Municipality** in writing. The **Department** and **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

L. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human

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Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

XIV. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall terminate on the 90th day after written notice by the **Department** if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the **Department** is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the **Department** will be made until the terms of this Agreement have been complied with on the part of the **Municipality**.

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SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF HIGH POINT

FED TAX ID NO: _____

REMITTANCE ADDRESS:

Finance Officer: _____

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)