

REQUEST FOR BOARD ACTION

HENDERSONCOUNTY BOARD OF COMMISSIONERS

MEETING DATE: Monday, November 6, 2017

SUBJECT: Grant Acceptance for Oklawaha Greenway Expansion Feasibility Studies

PRESENTER: John Mitchell, Business and Community Development Director

ATTACHMENTS:

1. Letter of Commitment
2. Inter-Local Cooperation Agreement (Northern Extension Study)
3. Inter-Local Cooperation Agreement (Southern Extension Study)
4. Line Item Transfer

SUMMARY OF REQUEST:

On March 15th, 2017, the Board of Commissioners directed staff to pursue funding from the French Broad River MPO. Following this meeting, staff applied for Surface Transportation Program Block Grant Program-Directly Attributable (STPBGP-DA) funds. Staff has been notified that the county has been awarded \$40,000 for a Southern Extension Feasibility Study, and \$56,000 for a Northern Extension Feasibility Study. As discussed at the March 15th Commissioner's meeting, a 20% Local Match is required. This funding would be to perform two distinct studies to determine the feasibility of extending the Oklawaha Greenway south to Blue Ridge Community College, with an option to expand further to Flat Rock Park, and north to Westfeldt Park.

The Board is requested to appropriate \$24,000 in Fund Balance for the required 20% match, and approve the associated budget amendment for the projects.

BOARD ACTION REQUESTED:

The Board is requested to accept the grant funds and authorize staff to execute the contract with the French Broad River MPO.

SUGESTED MOTION:

I move to accept STPBGP-DA Grant Funding for the Oklawaha Greenway Extension Feasibility Studies, and direct staff to execute the contract as well as the budget amendment.



1 Historic Courthouse Square • Suite 2 • Hendersonville, NC 28792
Phone (828) 697-4809 • Fax (828) 698-6014 • www.hendersoncountync.org

Steve Wyatt
County Manager

Amy Brantley
Assistant County Manager

March 30, 2017

Ms. Lyuba Zuyeva, Director
French Broad River Metropolitan Planning Organization
339 New Leicester Hwy, Suite 140
Asheville, NC 28816

Dear Ms. Zuyeva,

Please accept this letter of commitment to the French Broad River MPO regarding the Surface Transportation Program STBGP-DA 2017 call for projects. Henderson County is requesting funding for two feasibility studies expanding the Oklawaha Greenway from:

1. Jackson Park to Blue Ridge Community College (BRCC) with a possible extension to The Park of Flat Rock and the Henderson County Athletics and Activity Center (requested amount \$40,000 for the Southern Expansion Study), and;
2. Berkeley Mills Park to Westfeldt Park as part of an overall recreation master plan (requested amount \$56,000 for the Northern Expansion Study).

The Henderson County Board of Commissioners discussed the greenway improvements and expansion, including the development of a recreation master plan at its meeting on March 15, 2017 and directed staff to seek funding. Henderson County understands it is responsible for securing the required 20% local match of \$10,000 for the Southern Expansion Study and \$14,000 for the Northern Expansion Study.

We appreciate your consideration of these projects.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve Wyatt', is written over a horizontal line.

Steve Wyatt
County Manager

Land of Sky Regional Council and Henderson County
INTER-LOCAL COOPERATION AGREEMENT

Sub-Grant for a Transportation Planning Study "Oklawaha Greenway Northern Extension
Feasibility Study" to be Performed Using Federal Transportation Planning Grant and a Local
Match

THIS AGREEMENT, ("Agreement") is made and entered into this the 14th day of October, 2017, between Land of Sky Regional Council, a political subdivision of the State of North Carolina, (hereinafter "Council") and Henderson County, a political subdivision of the State of North Carolina (hereinafter "County"). This Interlocal Cooperation Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

I. BACKGROUND AND PURPOSE.

The Council is the Lead Planning Agency (LPA) for the French Broad River Metropolitan Planning Organization (FBRMPO). The County is a member of the French Broad River Metropolitan Planning Organization (FBRMPO), and one of the local governments who have entered into agreements with other members of the FBRMPO ("member governments") and the Governor of the State of North Carolina regarding the authority conferred to the FBRMPO to make transportation planning decisions regarding the region covered by the French Broad River MPO.

The French Broad River MPO, in an ongoing manner authorizes transportation planning projects including the one referenced in this agreement. Federal transportation funds (Federal MPO "PL" funds) provide no more than 80% of the total cost of projects authorized by the FBRMPO, while local governments provide at least 20% of the total cost ("the local match").

Certain projects authorized by the FBRMPO benefit a larger regional area, whereas others benefit just a particular county or municipality, such as the City; both types of projects are outlined in the Unified Planning Work Program (UPWP) adopted by the French Broad River MPO Board on an annual basis. The French Broad River MPO FY 2018 UPWP includes a Special Studies line item for the Oklawaha Greenway Northern Extension Feasibility Study, as a sub-grant to Henderson County in the amount of \$70,000, with an applicable CFDA# for this sub-grant 20.205-5. The FBRMPO UPWP for FY 2018 allocates MPO PL funds from the Unobligated Fund Balance for the Oklawaha Greenway Northern Extension Feasibility study.

The Council, as the LPA for the French Broad River MPO, must administer and manage the FBRMPO projects that benefit the entire metropolitan area represented by the FBRMPO; the Council may also contract with a member government for projects that occur within a particular municipality or county, and coordinate the reimbursement of transportation planning -federal portion of the project cost, while ensuring the contribution of funds for the local match from the member governments benefited by, interested in, or obligated to contribute to each project.

This Agreement is for a sub-grant from the Council to the County of the amounts approved by the Council and the County for specific transportation projects already authorized by the FBRMPO and included in the UPWP.

II. PROVISION OF LOCAL MATCH FUNDS FOR AUTHORIZED PROJECTS.

The County will make available an amount not to exceed \$14,000 (the "local matching funds") for Henderson County portion of the local match for the project briefly described below (referred to as "the Project" further in the agreement) without further request from the Council. The amount of the aforementioned Project has been approved for funding by the County in the amounts so described:

Oklawaha Greenway Northern Extension Feasibility Study - \$70,000 total cost, including \$56,000 federal PL funds and \$14,000 local funds provided by the County.

The Project will consist of an Oklawaha Greenway Northern Extension Feasibility Study. This study will consider a potential greenway connecting the current Oklawaha Greenway terminus at Berkeley Mills Park up to Westfeldt Park. Appropriate phasing and alternatives for access points, waterways and other barrier crossings along the corridor will be considered. The extension of the Oklawaha greenway to the northern end of the County is recommended in the Henderson County Comprehensive Plan (CCP) and incorporated in the Apple Country Greenway Master Plan. When implemented, this planned extension of the Oklawaha greenway would provide for pedestrian and bicycle access from downtown Hendersonville to the French Broad River access point at Westfeld Park, and to the job sites and recreation and tourism destinations located in proximity to the Asheville Regional Airport.

III. BUDGET APPROVALS AND PAYMENT OF FUNDS

A. **BUDGET.** The County agrees to provide local matching funds for the Project requested by the County and approved by the FBRMPO. The County will provide the local matching funds in order to secure the agreement of the FBRMPO for the project requested by the County.

B. **PAYMENT.** The Council will reimburse the County for the federal portion of the Project cost on a quarterly basis, upon submission of a request for reimbursement for the Project by the County with the necessary supporting documentation attached. Requests for reimbursement for this study must be submitted to the Council no later than 15 days following the end of the quarter for the first three quarters, and no later than 5 days following the end of the fourth quarter (July 5) in order to avoid delays in reimbursement. The Council will then submit a request for reimbursement to NCDOT. The Council retains the right to postpone reimbursement to the County for the Project until after receiving reimbursement from NCDOT.

The following supporting documentation will be required from the County when requesting reimbursement:

- Copies of payment documents substantiating payment for professional services on the Project (check stubs or vouchers and paid invoices including documentation/invoices from the prime- and sub-contractors)
- An invoice from the County to the Council stating the period of time for the Project and total expenditures, local match supplied by the County, and total federal portion to be reimbursed by the Council
- Documentation of the County's MBE/WBE/DBE procedure
- A progress report, summary of work completed, and deliverables-in-progress if requesting reimbursement before study is completed
- A final draft of the study with a final invoice for the Project

All payments shall be made pursuant to authorization in this Agreement and in the resolution or agenda item in which the specific amount for the project was approved.

C. FINANCIAL RECORDS

The County agrees to keep financial records and other applicable records for this project available during the contract period and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by NCDOT Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

IV. CONTRACT FOR PROFESSIONAL SERVICES

The County agrees to follow NCDOT Professional Services Requirements when contracting for planning work for the Project referenced in this agreement and to hold a competitive call for proposals. The call will be publicized and a method should be set for conducting technical evaluations of proposals and for selecting awardees. Awards should be made to the responsive firm whose proposal is most advantageous to the Project, with price and other factors considered. The County will allow the Council and NCDOT staff to review the Request for Proposals for the Project before it is released to make sure it includes all items required. The Council and NCDOT shall participate in the selection committee for selecting a vendor as well as on any subsequent steering committee for the Project.

V. APPLICABILITY OF ADDITIONAL PROCEDURES, GUIDELINS AND LAWS

Whereas, per 2 CFR 200, sub-agreement holders are required to meet all the requirements specified in the primary agreement for the funds being utilized, the Contractor agrees to review a copy of the agreement between NCDOT and Land of Sky Regional Council as the Lead Planning Agency for the French Broad River MPO. Specifically, the County shall ensure that the Project is undertaken and completed in accordance with the applicable procedures and guidelines set forth in the following documents:

- NCDOT Agreement with Land of Sky Regional Council to be designated as the Lead Planning Agency to carry out the MPO Planning Work (2008)
- NCDOT Agreement with Land of Sky Regional Council for the use of STBG funds for MPO planning activities (2015)

Furthermore, the Parties agree that this document is to be governed, construed, and enforced in accordance with all of the laws of the State of North Carolina. The County shall at all times observe and comply with all laws, ordinances, and regulations of the state, federal and local governments which may in any manner affect the performance of this Contract.

VI. NONDISCRIMINATION

The County agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Contract.

VII. E-VERIFY PROVISION

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the County, and the County's subcontractors, comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

E-Verify System Link: www.uscis.gov

VIII. INDEMNIFICATION

To the extent allowed by law, the County agrees to indemnify, hold harmless and defend the Council as well as its directors, officers, employees and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the County or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

To the extent allowed by law, the Council agrees to indemnify, hold harmless and defend the County as well as its directors, officers, employees and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the Council or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

X. NOTICE TO PARTIES

Notice to the Parties required under this agreement shall be made to the addresses listed below:

Lyubov Zuyeva, FBRMPO
Land of Sky Regional Council
339 New Leicester Highway (Suite 140)
Asheville, NC 28806
828-251-7454
lyuba@landofsky.org

Autumn Radcliff
Henderson County Planning Department
100 N. King St
Hendersonville, NC 28792
828-697-4819
autumnr@hendersoncountync.org

XI. MISCELLANEOUS.

A. COMPLETE AGREEMENT

This Contract contains the complete agreement of the Parties and may not be modified in any respect except by written amendment hereto.

B. TERM

This Agreement shall be effective as of the date it is duly executed by both the Council and the County. Unless terminated sooner, it shall expire at 12:01 AM, July 1, 2020. This Agreement may be terminated by either party, upon one month notice given in writing.

C. AMENDMENTS

This Agreement may be amended from time to time upon mutual consent of the governing bodies expressed in writing.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Council and County authority duly given.

SIGNED BY

Land of Sky Regional Council

By:  _____
Title: Executive Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

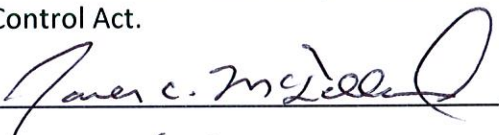
 _____, Land of Sky Regional Council Finance Officer

Date 10/14/17

Henderson County

By: _____
Title: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

 _____, Henderson County Finance Officer

Date 10/12/17

NORTH CAROLINA
COUNTIES OF BUNCOMBE, HAYWOOD
AND HENDERSON

11/12/08

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

DISBURSEMENT AND ACCOUNTING
OF URBAN TRANSPORTATION
PLANNING FUNDS APPROPRIATED
UNDER SECTION 104(f), TITLE 23
UNITED STATES CODE

AND

LAND OF SKY REGIONAL COUNCIL

WBS Element: 39225.1.2

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 Land of Sky Regional Council, hereinafter called "Agency".

WITNESSETH:

WHEREAS, Each MPO is required to develop a comprehensive transportation plan in cooperation with NCDOT and in accordance with 23 U.S.C., Section 134, any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina; and

WHEREAS, Section 104 (f) of Title 23, United States Code, and any subsequent amendments to that statute, provides funds to the MPO to carryout the above planning activities :

WHEREAS, the Land of Sky Regional Council has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization to be responsible for carrying out the provisions of Section 134, Title 23, United States Code, and to be the recipient of its share of the planning funds apportioned to the State under Section 104(f) Title 23 United States Code, hereinafter referred to as PL Funds, as determined by distribution formula approved by the Secretary of the North Carolina Department of Transportation on August 31, 2005 and by the Federal Highway Administration on September 12, 2005;

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:

1. GENERAL PROVISIONS

This Agreement will become effective on 1/15, 2009 and will remain in effect until revised or until the Section 104(f) 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 30 days written notice to the other party prior to the date of termination.

Upon execution of this Agreement, the Department will provide authorization to proceed. The Agency shall not contract for, or perform, any work prior to receipt of written authorization to proceed. Any work performed, or contracts executed, prior to written authorization to proceed will be deemed ineligible for reimbursement.

2. PLANNING

The Agency and the Department shall, in cooperation with other participating agencies perform the planning work as required by Section 134, Title 23, United States Code, 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 which is identified in the Planning Work Program prepared by the Agency and approved by the Transportation Advisory Committee of the Metropolitan Planning Organization, the Department, and the U. S. Department of Transportation.

(a) The Department will allocate to the Agency its share of the Section 104 (f) planning funds in accordance with the formula approved by the Secretary of the North Carolina Department of Transportation.

(b) The Agency will utilize its share of the Section 104(f) planning funds and required matching funds for carrying out the provisions of Section 134, Title 23, United States Code, and related planning requirements.

(c) The provisions of all existing directives, procedures, agreements, plans, or programs related to Section 134, Title 23, United States Code, or any subsequent interpretation or revisions of the above by Federal Highway Administration, shall apply in the performance of all work under this Agreement.

(d) The Agency's share of the Section 104(f) planning funds will be provided quarterly on a reimbursable basis upon submission of a quarterly progress report and a quarterly invoice. The total amount of funds to be provided for a fiscal year will be in accordance with the amount specified in the approved Planning Work Program and commensurate with Federal-Aid allocations and the allocation formula approved by the Department.

(e) Quarterly progress reports and invoices will be submitted by the Agency to the Transportation Planning Branch, North Carolina Department of Transportation, in triplicate at the end of each calendar quarter. The quarterly progress report should include an overall general evaluation of work accomplished on work elements in the Planning Work Program in narrative form and by estimated percentage of the work completed. The invoice should include a statement and certification by the Director of Finance for the Agency of the expenditures under the section 104(f) planning program and other funds expended during the year for all work provided for in the Planning Work Program.

(f) The Agency shall adhere to the standards established by Title 49 Code of Federal Regulations (CFR) Part 18 and additions or amendments thereto, for Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

(g) The Agency may provide any part or all of these funds to any local, county, regional or State planning agency by mutual agreement and on a reimbursable basis to assist in the accomplishment of work required for the transportation planning process. Such action will be in accordance with the approved Planning Work Program.

(h) The Agency shall save harmless the Department or other agencies of government from all claims and liability due to its negligence or that of its subcontractor

(i) The Department and Federal Highway Administration shall be permitted to review and inspect study activities as necessary.

3. PROFESSIONAL AND ENGINEERING SERVICES

If the Agency contracts with a private firm for engineering/ architectural services that are required to carry out its planning responsibilities, it is agreed as follows:

(a) The Agency 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.

(b) The Agency, when procuring professional and engineering services, must adhere to North Carolina Department of Transportation *Rules and Regulations for Major Professional or Specialized Services Contracts*. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Agency shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference (www.fhwa.dot.gov/legregs/legislat.html).

(c) The Agency shall submit all professional services contract proposals to the Department for review and approval prior to the execution of the professional services contract by the Agency. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

4. SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the NC Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

- The Agency shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Agency fails to comply with these requirements, the Department will withhold funding until these requirements are met.

5. FUNDING

The Department shall reimburse the Agency to the extent of eighty percent of the approved eligible costs covered under this Agreement. The Agency's share of the section 104(f) planning funds must be matched on an 80-20 basis (80 percent section 104(f) planning funds, 20 percent local funds). Generally, no portion of the matching funds shall be derived from other federal sources. They shall not consist of services, property or funds used as the non-federal share under other federal programs. Reimbursement to the Agency shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G, and Federal-Aid Policy Guide Part 172, which are being incorporated into this Agreement by reference (www.fhwa.dot.gov/legregs/legislat.html). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration, which is to participate in the eligible costs of the project up to the maximum federal award amount of \$25,000, subject to compliance with all applicable federal policy and procedural rules and regulations. Said reimbursement shall be made as follows:

- (a) The Agency may bill the Department on a quarterly basis for eligible project costs incurred by submitting an itemized invoice to the Transportation Planning Branch, 1554 Mail Service Center, Raleigh, NC 27699-1554. Proper supporting documentation shall accompany each invoice as may be required by the Department.
- (b) Reimbursement to the Agency for all invoices submitted shall be made upon approval of each invoice by the Department and the Financial Management Division of the Department.
- (c) A final itemized invoice for each fiscal year must be submitted within sixty days (60) days of the end of the fiscal year, with acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment. Upon receipt of the "Final Invoice", the Department will de-program any remaining funds and close the project subject to final review and audit. Any remaining funds will be made available for future programming.
- (d) The Agency shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 19 (www.dot.gov/ost/m60/grant/49cfr18.htm) and Office of Management and Budget (OMB) Circular A-110 (www.whitehouse.gov/OMB/circulars/a102/a102.htm). Prior approval is required from FHWA if the Agency desires to perform any work by force account. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Said Federal Highway Administration regulations are contained in Federal-Aid Policy Guide, 23 CFR Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference (www.access.gpo.gov/nara/cfr/waisidx_03/23cfr635_03.html) as fully as if herein set out. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs as set forth in OMB Circular A-21 (www.whitehouse.gov/OMB/circulars/a087/a087-all.htm). Reimbursement shall be based on actual costs incurred with the exception of equipment owned by the Agency.

Reimbursement for rates of equipment owned by the Agency cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

(e) In accordance with OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* (www.whitehouse.gov/OMB/circulars/a133/a133.html), dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Agency shall arrange for an independent financial and compliance audit of its fiscal operations. The Agency shall furnish the Department with a copy of the independent audit report within thirty -(30) days of completion of the report, but not later than nine (9) months after the Agency's fiscal year ends.

(f) Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

6. ADDITIONAL PROVISIONS

The Agency is solely responsible for all agreements, contracts, and work orders entered into or issued for this project. The Department shall not be held liable by the Agency for any expenses or obligations incurred for the project except those specifically eligible for and obligations as approved by the Department under the terms of this Agreement. The Department shall not reimburse the Agency any costs that exceed the total agreed upon at any time.

The Agency agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs caused by actions of The Agency. Reimbursement shall be made by the Agency to 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.

The Agency and its agents shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Agency 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 five (5) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Agency certifies, by signature of this agreement, 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 a Federal or State Department or Agency.

The Agency agrees to indemnify and hold harmless the Department, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this project. Furthermore, the Agency shall certify to

the Department compliance with all applicable State, Federal, and local environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by any entity performing work under contract with the Agency.

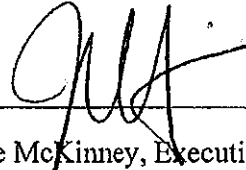
Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Agreement.

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 Land-of-Sky Regional Council.

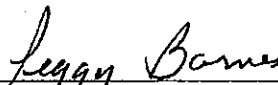
IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, in duplicate, on the part of the Department and of the Land-of-Sky Regional Council by authority duly given.

(Seal)

LAND-OF-SKY REGIONAL COUNCIL

BY: 
Joe McKinney, Executive Director

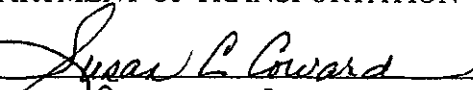
(SEAL)


Peggy Barnes, Finance Officer

Federal Tax Identification Number
56 1024369
Land-of-Sky Regional Council

Remittance Address:
339 New Leicester Hwy, Suite 140
Asheville NC 28806

DEPARTMENT OF TRANSPORTATION

BY: 
TITLE: Deputy Secretary
DATE: 1/15/2009

APPROVED BY BOARD OF TRANSPORTATION ITEM O: November 6, 2008

NORTH CAROLINA

**MPO Agreement – Use of Planning (PL) and
STP-DA funds for Planning Activities**

BUNCOMBE COUNTY

DATE: 6/23/2015

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-5616

AND

WBS Elements: PL funds: 39225.1.2

STP-DA funds: 39225.1.25

LAND OF SKY REGIONAL COUNCIL

FEDERAL-AID NUMBER (PL): PL-00PL(56)

FEDERAL-AID NUMBER (DA): PL-00PL(58)

CFDA #: 20.205

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 Land of Sky Regional Council, hereinafter referred to as the "Council."

WITNESSETH:

WHEREAS, Title 23 United States Code, Section 134 – Metropolitan Transportation Planning, subsection (a) and subsection (c) requires each Metropolitan Planning Organization (MPO) to develop a comprehensive transportation plan in cooperation with the State and in accordance with Title 23 USC, Section 134 and any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina (NCGS); and,

WHEREAS, the Council has been designated as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization (MPO) to be responsible for carrying out the provisions of Title 23 USC, Section 134; and,

WHEREAS, Title 23 United States Code, Section 104(b)(5) allows for the apportionment of highway funds for metropolitan planning purposes, otherwise known as Planning (PL) funds; and,

WHEREAS, 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 Program (STP) to be used for the following eligible use: Surface Transportation Planning Programs (23 USC 133(b)(10)); and,

WHEREAS, the Department has agreed to administer the disbursement of PL funds on behalf of FHWA to the MPO, as determined by a distribution formula approved by the Department;

WHEREAS, the work performed by the MPO will be in accordance with an approved annual work program and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed STP-DA funds in the approved Transportation Improvement Program for the work program; and,

WHEREAS, the Council, on behalf of the policy board of the MPO, 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 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

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:

1. GENERAL PROVISIONS

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.

AGREEMENT MODIFICATIONS

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

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Council 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 and/or its contractors and agents. The Department will provide technical oversight to guide the MPO. The Department must approve any assignment or transfer of the responsibilities of the Council set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Council shall designate a person or persons to be in responsible charge of the Project. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

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

COMPLIANCE WITH STATE/FEDERAL POLICY

The Council, 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 Transportation Planning Branch's (TPB) procedures for administering the MPO planning process.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Council to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Council, serving as the Lead Planning Agency on behalf of the MPO 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 MPO and approved by the policy board of the MPO, the Department, and FHWA.

3. FUNDING

Subject to compliance by the Council with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate in eighty percent of eligible costs related to the MPO's carrying out the UPWP. The Council shall provide the non-federal match.

Funding will be provided on an annual basis per the approved UPWP and commensurate with Federal-aid allocations and the distribution approved by the Department. The Department will notify the MPO of the allocated funding on an annual basis.

4. AGREEMENT PERIOD OF PERFORMANCE

This Agreement will become effective on July 1, 2015 and will remain in effect for five years, or until the funding is no longer available, or until such time as the Agreement is terminated by the parties hereto, as indicated in Provision 10, Termination of Agreement.

5. FUNDING AUTHORIZATION

Upon approval of the UPWP, the Department will authorize the annual funding and provide the Council with a notice to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement. Reimbursements will occur as spelled out in the MPO Administrative procedures manual.

6. PROCUREMENT OF MATERIALS AND SERVICES

PROCUREMENT POLICY

When procuring professional services, the Council must adhere to the following, as applicable:

- Title 2 Code of Federal Regulations Part 200.318;
- Title 23 of the Code of Federal Regulations, Part 172;
- Title 40 United States Code, Chapter 11, Section 1101-1104;
- NCGS 143-64, Parts 31 and 32;
- TPB's *Procurement of Consultant Services by MPO* procedure;
- The Department's *Small Professional Service Firm (SPSF) Program Guidelines*;
- The Department's *Policies and Procedures for Major Professional or Specialized Services Contracts* for contracts valued at or above \$50k; and,
- The Department's *Local Programs Management Handbook* for professional service contracts valued under \$50k.

Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascritps/Statutes/Statutes.asp.

- The Council 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.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Council shall not execute a consultant contract until the Department's review has been completed.

7. PROGRAM DELIVERY

The Council and the Department 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, and FHWA.

- a) The Department will allocate to the Council, on behalf of the MPO, its share of the Section 104(d) planning funds in accordance with the formula approved by the Department.

- b) The Council, on behalf of the MPO, will utilize its share of the Section 104(d) planning funds and required matching funds for carrying out provisions of Title 23, United States Code, Section 134, and related planning requirements.
- c) 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.
- d) All work shall be performed in accordance with the Department's procedures and guidelines. Said documentation shall be submitted to the Department for review and approval, where applicable. The Council, on behalf of the MPO, shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required. The Council, on behalf of the MPO, shall advertise and conduct any required public hearings.

8. REIMBURSEMENT

REIMBURSEMENT GUIDANCE

The Council 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." Reimbursement to the Council shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172 which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm. Reimbursement to the Council shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Council with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Council prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Council costs that exceed the total funding per this Agreement, any Supplemental Agreements or the approved annual UPWP.

- **UNSUBSTANTIATED COSTS**

The Council agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Council may bill the Department for eligible Project 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 Council certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement. The Council shall bill the Department quarterly. All invoices must be submitted and processed for payment as specified in TPB's *MPO Administration – Process MPO Invoices* procedure.

- **INTERNAL APPROVALS**

Reimbursement to the Council shall be made upon approval of the invoice by the Department's Financial Management Division.

9. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Council is responsible for submitting quarterly and final reports as specified in the TPB's *MPO Administration – Process MPO Invoices* procedure, currently located at https://connect.ncdot.gov/projects/planning/TransPlanManuals/Process%20MPO_invoices.pdf.

PROJECT RECORDS

The Council 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 Council 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 five (5) 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 Federal Government.

10. TERMINATION OF AGREEMENT

If the Council decides to terminate the Agreement without the concurrence of the Department, the Council shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Agreement.

The Agreement may be terminated by either party by giving 30 days written notice to the other party prior to the date of termination. If the Council and the Department mutually decide to terminate the Agreement, the costs expended to date by the Council will be reimbursed with the available funding.

If the Department terminates the Agreement for cause, then the Council may be liable for reimbursement of expended funds.

11. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Council to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Council agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

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

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Council shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

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

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.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Council for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Council.

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 Council shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Council 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 Council's fiscal year ends.

REIMBURSEMENT BY COUNCIL

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Council 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.

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.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

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, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

12. 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 automatically terminate 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 Council.

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

L.S. ATTEST:

LAND OF SKY REGIONAL COUNCIL

BY: *E. Anderson*

BY: *ABL*

TITLE: *ECD Director*

TITLE: *Executive Director*

DATE: *6/29/15*

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by *Danna Stunshury* of the Land of Sky Regional Council as attested to by the signature of *Danna Stunshury* Clerk of the *Council Board* on *7/6/15* (Date)

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

V. Thomas
(FINANCE OFFICER)

Federal Tax Identification Number

56-1024369

Land of Sky Regional Council

Remittance Address:

339 New Leicester Hwy, Ste 140
Asheville NC 28806

DEPARTMENT OF TRANSPORTATION

BY: *Mike [Signature]*
(CHIEF ENGINEER)

DATE: *7/31/15*

APPROVED BY BOARD OF TRANSPORTATION ITEM O: *7/9/2015* (Date)

Land of Sky Regional Council and Henderson County
INTER-LOCAL COOPERATION AGREEMENT

Sub-Grant for a Transportation Planning Study "Oklawaha Greenway Southern Extension Feasibility Study" to be Performed Using Federal Transportation Planning Grant and a Local Match

THIS AGREEMENT, ("Agreement") is made and entered into this the 11th day of October, 2017, between Land of Sky Regional Council, a political subdivision of the State of North Carolina, (hereinafter "Council") and Henderson County, a political subdivision of the State of North Carolina (hereinafter "County"). This Interlocal Cooperation Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes.

I. BACKGROUND AND PURPOSE.

The Council is the Lead Planning Agency (LPA) for the French Broad River Metropolitan Planning Organization (FBRMPO). The County is a member of the French Broad River Metropolitan Planning Organization (FBRMPO), and one of the local governments who have entered into agreements with other members of the FBRMPO ("member governments") and the Governor of the State of North Carolina regarding the authority conferred to the FBRMPO to make transportation planning decisions regarding the region covered by the French Broad River MPO.

The French Broad River MPO, in an ongoing manner authorizes transportation planning projects including the one referenced in this agreement. Federal transportation funds (Federal MPO "PL" funds) provide no more than 80% of the total cost of projects authorized by the FBRMPO, while local governments provide at least 20% of the total cost ("the local match").

Certain projects authorized by the FBRMPO benefit a larger regional area, whereas others benefit just a particular county or municipality, such as the City; both types of projects are outlined in the Unified Planning Work Program (UPWP) adopted by the French Broad River MPO Board on an annual basis. The French Broad River MPO FY 2018 UPWP includes a Special Studies line item for the Oklawaha Greenway Southern Extension Feasibility Study, as a sub-grant to Henderson County in the amount of \$50,000, with an applicable CFDA# for this sub-grant 20.205-5. The FBRMPO UPWP for FY 2018 allocates STBG funds flexed over to MPO PL funds for the special studies including the Oklawaha Greenway Southern Extension Feasibility Study.

The Council, as the LPA for the French Broad River MPO, must administer and manage the FBRMPO projects that benefit the entire metropolitan area represented by the FBRMPO; the Council may also contract with a member government for projects that occur within a particular municipality or county, and coordinate the reimbursement of transportation planning -federal portion of the project cost, while ensuring the contribution of funds for the local match from the member governments benefited by, interested in, or obligated to contribute to each project.

This Agreement is for a sub-grant from the Council to the County of the amounts approved by the Council and the County for specific transportation projects already authorized by the FBRMPO and included in the UPWP.

II. PROVISION OF LOCAL MATCH FUNDS FOR AUTHORIZED PROJECTS.

The County will make available an amount not to exceed \$10,000 (the "local matching funds") for Henderson County portion of the local match for the project briefly described below (referred to as "the Project" further in the agreement) without further request from the Council. The amount of the aforementioned Project has been approved for funding by the County in the amounts so described:

Oklawaha Greenway Northern Extension Feasibility Study - \$50,000 total cost, including \$40,000 federal PL funds and \$10,000 local funds provided by the County.

The Project will consist of an Oklawaha Greenway Southern Extension Feasibility Study. This study will consider a potential greenway connecting the current greenway terminus at Jackson Park to Blue Ridge Community College (BRCC), as well as potential extensions to the Flat Rock Park and Henderson County Athletics and Activity Center. The extension of the greenway is recommended in the Henderson County Comprehensive Plan (CCP) and incorporated in the Apple Country Greenway Master Plan. This section of the greenway expansion is also supported in the FBRMPO 2040 Metropolitan Transportation Plan (MTP). When implemented, this section of the greenway would potentially connect active transportation users from downtown Hendersonville to Blue Ridge Community College.

III. BUDGET APPROVALS AND PAYMENT OF FUNDS

A. BUDGET. The County agrees to provide local matching funds for the Project requested by the County and approved by the FBRMPO. The County will provide the local matching funds in order to secure the agreement of the FBRMPO for the project requested by the County.

B. PAYMENT. The Council will reimburse the County for the federal portion of the Project cost on a quarterly basis, upon submission of a request for reimbursement for the Project by the County with the necessary supporting documentation attached. Requests for reimbursement for this study must be submitted to the Council no later than 15 days following the end of the quarter for the first three quarters, and no later than 5 days following the end of the fourth quarter (July 5) in order to avoid delays in reimbursement. The Council will then submit a request for reimbursement to NCDOT. The Council retains the right to postpone reimbursement to the County for the Project until after receiving reimbursement from NCDOT.

The following supporting documentation will be required from the County when requesting reimbursement:

- Copies of payment documents substantiating payment for professional services on the Project (check stubs or vouchers and paid invoices including documentation/invoices from the prime- and sub-contractors)
- An invoice from the County to the Council stating the period of time for the Project and total expenditures, local match supplied by the County, and total federal portion to be reimbursed by the Council
- Documentation of the County's MBE/WBE/DBE procedure
- A progress report, summary of work completed, and deliverables-in-progress if requesting reimbursement before study is completed
- A final draft of the study with a final invoice for the Project

All payments shall be made pursuant to authorization in this Agreement and in the resolution or agenda item in which the specific amount for the project was approved.

C. FINANCIAL RECORDS

The County agrees to keep financial records and other applicable records for this project available during the contract period and for five (5) years from the date of payment of the final voucher by the Federal Highway

Administration, for inspection and audit by NCDOT Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

IV. CONTRACT FOR PROFESSIONAL SERVICES

The County agrees to follow NCDOT Professional Services Requirements when contracting for planning work for the Project referenced in this agreement and to hold a competitive call for proposals. The call will be publicized and a method should be set for conducting technical evaluations of proposals and for selecting awardees. Awards should be made to the responsive firm whose proposal is most advantageous to the Project, with price and other factors considered. The County will allow the Council and NCDOT staff to review the Request for Proposals for the Project before it is released to make sure it includes all items required. The Council and NCDOT shall participate in the selection committee for selecting a vendor as well as on any subsequent steering committee for the Project.

V. APPLICABILITY OF ADDITIONAL PROCEDURES, GUIDELINS AND LAWS

Whereas, per 2 CFR 200, sub-agreement holders are required to meet all the requirements specified in the primary agreement for the funds being utilized, the Contractor agrees to review a copy of the 2015 agreement between NCDOT and Land of Sky Regional Council as the Lead Planning Agency for the French Broad River MPO to use STBG funds for planning activities and agrees to abide to all the applicable rules and requirements. Specifically, the City shall ensure that the Project is undertaken and completed in accordance with the applicable procedures and guidelines set forth in the following documents:

- NCDOT Agreement with Land of Sky Regional Council to be designated as the Lead Planning Agency to carry out the MPO Planning Work (2008)
- NCDOT Agreement with Land of Sky Regional Council for the use of STBG funds for MPO planning activities (2015)

Furthermore, the Parties agree that this document is to be governed, construed, and enforced in accordance with all of the laws of the State of North Carolina. The County shall at all times observe and comply with all laws, ordinances, and regulations of the state, federal and local governments which may in any manner affect the performance of this Contract.

VI. NONDISCRIMINATION

The County agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Contract.

VII. E-VERIFY PROVISION

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the County, and the County's subcontractors, comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

E-Verify System Link: www.uscis.gov

VIII. INDEMNIFICATION

To the extent allowed by law, the County agrees to indemnify, hold harmless and defend the Council as well as its directors, officers, employees and agents against all claims for personal injury or property damage or both,

including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the County or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

To the extent allowed by law, the Council agrees to indemnify, hold harmless and defend the County as well as its directors, officers, employees and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the Council or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

X. NOTICE TO PARTIES

Notice to the Parties required under this agreement shall be made to the addresses listed below:

Lyubov Zuyeva, FBRMPO
Land of Sky Regional Council
339 New Leicester Highway (Suite 140)
Asheville, NC 28806
828-251-7454
lyuba@landofsky.org

Autumn Radcliff
Henderson County Planning Department
100 N. King St
Hendersonville, NC 28792
828-697-4819
autumnr@hendersoncountync.org

XI. MISCELLANEOUS.

A. COMPLETE AGREEMENT

This Contract contains the complete agreement of the Parties and may not be modified in any respect except by written amendment hereto.

B. TERM

This Agreement shall be effective as of the date it is duly executed by both the Council and the County. Unless terminated sooner, it shall expire at 12:01 AM, July 1, 2020. This Agreement may be terminated by either party, upon one month notice given in writing.

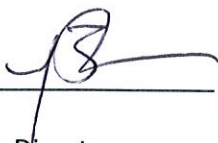
C. AMENDMENTS

This Agreement may be amended from time to time upon mutual consent of the governing bodies expressed in writing.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Council and County authority duly given.

SIGNED BY

Land of Sky Regional Council

By: 
Title: Executive Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

, Land of Sky Regional Council Finance Officer

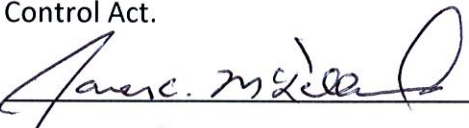
Date 10/11/17

Henderson County

By: _____

Title: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

, Henderson County Finance Officer

Date 10/12/17

NORTH CAROLINA
COUNTIES OF BUNCOMBE, HAYWOOD
AND HENDERSON

11/12/08

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

DISBURSEMENT AND ACCOUNTING
OF URBAN TRANSPORTATION
PLANNING FUNDS APPROPRIATED
UNDER SECTION 104(f), TITLE 23
UNITED STATES CODE

AND

LAND OF SKY REGIONAL COUNCIL

WBS Element: 39225.1.2

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 Land of Sky Regional Council, hereinafter called "Agency".

WITNESSETH:

WHEREAS, Each MPO is required to develop a comprehensive transportation plan in cooperation with NCDOT and in accordance with 23 U.S.C., Section 134, any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina; and

WHEREAS, Section 104 (f) of Title 23, United States Code, and any subsequent amendments to that statute, provides funds to the MPO to carryout the above planning activities :

WHEREAS, the Land of Sky Regional Council has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization to be responsible for carrying out the provisions of Section 134, Title 23, United States Code, and to be the recipient of its share of the planning funds apportioned to the State under Section 104(f) Title 23 United States Code, hereinafter referred to as PL Funds, as determined by distribution formula approved by the Secretary of the North Carolina Department of Transportation on August 31, 2005 and by the Federal Highway Administration on September 12, 2005;

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:

1. GENERAL PROVISIONS

This Agreement will become effective on 1/15, 2009 and will remain in effect until revised or until the Section 104(f) 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 30 days written notice to the other party prior to the date of termination.

Upon execution of this Agreement, the Department will provide authorization to proceed. The Agency shall not contract for, or perform, any work prior to receipt of written authorization to proceed. Any work performed, or contracts executed, prior to written authorization to proceed will be deemed ineligible for reimbursement.

2. PLANNING

The Agency and the Department shall, in cooperation with other participating agencies perform the planning work as required by Section 134, Title 23, United States Code, 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 which is identified in the Planning Work Program prepared by the Agency and approved by the Transportation Advisory Committee of the Metropolitan Planning Organization, the Department, and the U. S. Department of Transportation.

(a) The Department will allocate to the Agency its share of the Section 104 (f) planning funds in accordance with the formula approved by the Secretary of the North Carolina Department of Transportation.

(b) The Agency will utilize its share of the Section 104(f) planning funds and required matching funds for carrying out the provisions of Section 134, Title 23, United States Code, and related planning requirements.

(c) The provisions of all existing directives, procedures, agreements, plans, or programs related to Section 134, Title 23, United States Code, or any subsequent interpretation or revisions of the above by Federal Highway Administration, shall apply in the performance of all work under this Agreement.

(d) The Agency's share of the Section 104(f) planning funds will be provided quarterly on a reimbursable basis upon submission of a quarterly progress report and a quarterly invoice. The total amount of funds to be provided for a fiscal year will be in accordance with the amount specified in the approved Planning Work Program and commensurate with Federal-Aid allocations and the allocation formula approved by the Department.

(e) Quarterly progress reports and invoices will be submitted by the Agency to the Transportation Planning Branch, North Carolina Department of Transportation, in triplicate at the end of each calendar quarter. The quarterly progress report should include an overall general evaluation of work accomplished on work elements in the Planning Work Program in narrative form and by estimated percentage of the work completed. The invoice should include a statement and certification by the Director of Finance for the Agency of the expenditures under the section 104(f) planning program and other funds expended during the year for all work provided for in the Planning Work Program.

(f) The Agency shall adhere to the standards established by Title 49 Code of Federal Regulations (CFR) Part 18 and additions or amendments thereto, for Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

(g) The Agency may provide any part or all of these funds to any local, county, regional or State planning agency by mutual agreement and on a reimbursable basis to assist in the accomplishment of work required for the transportation planning process. Such action will be in accordance with the approved Planning Work Program.

(h) The Agency shall save harmless the Department or other agencies of government from all claims and liability due to its negligence or that of its subcontractor

(i) The Department and Federal Highway Administration shall be permitted to review and inspect study activities as necessary.

3. PROFESSIONAL AND ENGINEERING SERVICES

If the Agency contracts with a private firm for engineering/ architectural services that are required to carry out its planning responsibilities, it is agreed as follows:

(a) The Agency 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.

(b) The Agency, when procuring professional and engineering services, must adhere to North Carolina Department of Transportation *Rules and Regulations for Major Professional or Specialized Services Contracts*. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Agency shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference (www.fhwa.dot.gov/legregs/legislat.html).

(c) The Agency shall submit all professional services contract proposals to the Department for review and approval prior to the execution of the professional services contract by the Agency. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

4. SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the NC Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

- The Agency shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Agency fails to comply with these requirements, the Department will withhold funding until these requirements are met.

5. FUNDING

The Department shall reimburse the Agency to the extent of eighty percent of the approved eligible costs covered under this Agreement. The Agency's share of the section 104(f) planning funds must be matched on an 80-20 basis (80 percent section 104(f) planning funds, 20 percent local funds). Generally, no portion of the matching funds shall be derived from other federal sources. They shall not consist of services, property or funds used as the non-federal share under other federal programs. Reimbursement to the Agency shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G, and Federal-Aid Policy Guide Part 172, which are being incorporated into this Agreement by reference (www.fhwa.dot.gov/legstregs/legislat.html). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration, which is to participate in the eligible costs of the project up to the maximum federal award amount of \$25,000, subject to compliance with all applicable federal policy and procedural rules and regulations. Said reimbursement shall be made as follows:

- (a) The Agency may bill the Department on a quarterly basis for eligible project costs incurred by submitting an itemized invoice to the Transportation Planning Branch, 1554 Mail Service Center, Raleigh, NC 27699-1554. Proper supporting documentation shall accompany each invoice as may be required by the Department.
- (b) Reimbursement to the Agency for all invoices submitted shall be made upon approval of each invoice by the Department and the Financial Management Division of the Department.
- (c) A final itemized invoice for each fiscal year must be submitted within sixty days (60) days of the end of the fiscal year, with acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment. Upon receipt of the "Final Invoice", the Department will de-program any remaining funds and close the project subject to final review and audit. Any remaining funds will be made available for future programming.
- (d) The Agency shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 19 (www.dot.gov/ost/m60/grant/49cfr18.htm) and Office of Management and Budget (OMB) Circular A-110 (www.whitehouse.gov/OMB/circulars/a102/a102.htm). Prior approval is required from FHWA if the Agency desires to perform any work by force account. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Said Federal Highway Administration regulations are contained in Federal-Aid Policy Guide, 23 CFR Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference (www.access.gpo.gov/nara/cfr/waisidx_03/23cfr635_03.html) as fully as if herein set out. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs as set forth in OMB Circular A-21 (www.whitehouse.gov/OMB/circulars/a087/a087-all.htm). Reimbursement shall be based on actual costs incurred with the exception of equipment owned by the Agency.

Reimbursement for rates of equipment owned by the Agency cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

(e) In accordance with OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* (www.whitehouse.gov/OMB/circulars/a133/a133.html), dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Agency shall arrange for an independent financial and compliance audit of its fiscal operations. The Agency shall furnish the Department with a copy of the independent audit report within thirty -(30) days of completion of the report, but not later than nine (9) months after the Agency's fiscal year ends.

(f) Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

6. ADDITIONAL PROVISIONS

The Agency is solely responsible for all agreements, contracts, and work orders entered into or issued for this project. The Department shall not be held liable by the Agency for any expenses or obligations incurred for the project except those specifically eligible for and obligations as approved by the Department under the terms of this Agreement. The Department shall not reimburse the Agency any costs that exceed the total agreed upon at any time.

The Agency agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs caused by actions of The Agency. Reimbursement shall be made by the Agency to 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.

The Agency and its agents shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Agency 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 five (5) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Agency certifies, by signature of this agreement, 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 a Federal or State Department or Agency.

The Agency agrees to indemnify and hold harmless the Department, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this project. Furthermore, the Agency shall certify to

the Department compliance with all applicable State, Federal, and local environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by any entity performing work under contract with the Agency.

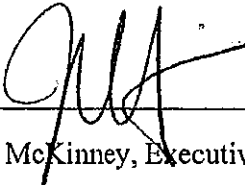
Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Agreement.

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 Land-of-Sky Regional Council.

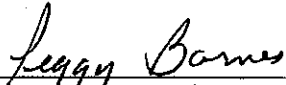
IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, in duplicate, on the part of the Department and of the Land-of-Sky Regional Council by authority duly given.

(Seal)

LAND-OF-SKY REGIONAL COUNCIL

BY: 
Joe McKinney, Executive Director

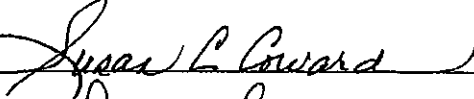
(SEAL)


Peggy Barnes, Finance Officer

Federal Tax Identification Number
56 1024369 _____
Land-of-Sky Regional Council

Remittance Address:
339 New Leicester Hwy, Suite 140
Asheville NC 28806 _____

DEPARTMENT OF TRANSPORTATION

BY: 
TITLE: Deputy Secretary
DATE: 1/15/2009

APPROVED BY BOARD OF TRANSPORTATION ITEM O: November 6, 2008

NORTH CAROLINA

**MPO Agreement – Use of Planning (PL) and
STP-DA funds for Planning Activities**

BUNCOMBE COUNTY

DATE: 6/23/2015

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-5616

AND

WBS Elements: PL funds: 39225.1.2
STP-DA funds: 39225.1.25

LAND OF SKY REGIONAL COUNCIL

FEDERAL-AID NUMBER (PL): PL-00PL(56)
FEDERAL-AID NUMBER (DA): PL-00PL(58)
CFDA #: 20.205

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 Land of Sky Regional Council, hereinafter referred to as the "Council."

WITNESSETH:

WHEREAS, Title 23 United States Code, Section 134 – Metropolitan Transportation Planning, subsection (a) and subsection (c) requires each Metropolitan Planning Organization (MPO) to develop a comprehensive transportation plan in cooperation with the State and in accordance with Title 23 USC, Section 134 and any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina (NCGS); and,

WHEREAS, the Council has been designated as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization (MPO) to be responsible for carrying out the provisions of Title 23 USC, Section 134; and,

WHEREAS, Title 23 United States Code, Section 104(b)(5) allows for the apportionment of highway funds for metropolitan planning purposes, otherwise known as Planning (PL) funds; and,

WHEREAS, 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 Program (STP) to be used for the following eligible use: Surface Transportation Planning Programs (23 USC 133(b)(10)); and,

WHEREAS, the Department has agreed to administer the disbursement of PL funds on behalf of FHWA to the MPO, as determined by a distribution formula approved by the Department;

WHEREAS, the work performed by the MPO will be in accordance with an approved annual work program and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed STP-DA funds in the approved Transportation Improvement Program for the work program; and,

WHEREAS, the Council, on behalf of the policy board of the MPO, 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 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

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:

1. GENERAL PROVISIONS

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.

AGREEMENT MODIFICATIONS

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

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Council 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 and/or its contractors and agents. The Department will provide technical oversight to guide the MPO. The Department must approve any assignment or transfer of the responsibilities of the Council set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Council shall designate a person or persons to be in responsible charge of the Project. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

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

COMPLIANCE WITH STATE/FEDERAL POLICY

The Council, 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 Transportation Planning Branch's (TPB) procedures for administering the MPO planning process.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Council to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Council, serving as the Lead Planning Agency on behalf of the MPO 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 MPO and approved by the policy board of the MPO, the Department, and FHWA.

3. FUNDING

Subject to compliance by the Council with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate in eighty percent of eligible costs related to the MPO's carrying out the UPWP. The Council shall provide the non-federal match.

Funding will be provided on an annual basis per the approved UPWP and commensurate with Federal-aid allocations and the distribution approved by the Department. The Department will notify the MPO of the allocated funding on an annual basis.

4. AGREEMENT PERIOD OF PERFORMANCE

This Agreement will become effective on July 1, 2015 and will remain in effect for five years, or until the funding is no longer available, or until such time as the Agreement is terminated by the parties hereto, as indicated in Provision 10, Termination of Agreement.

5. FUNDING AUTHORIZATION

Upon approval of the UPWP, the Department will authorize the annual funding and provide the Council with a notice to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement. Reimbursements will occur as spelled out in the MPO Administrative procedures manual.

6. PROCUREMENT OF MATERIALS AND SERVICES

PROCUREMENT POLICY

When procuring professional services, the Council must adhere to the following, as applicable:

- Title 2 Code of Federal Regulations Part 200.318;
- Title 23 of the Code of Federal Regulations, Part 172;
- Title 40 United States Code, Chapter 11, Section 1101-1104;
- NCGS 143-64, Parts 31 and 32;
- TPB's *Procurement of Consultant Services by MPO procedure*;
- The Department's *Small Professional Service Firm (SPSF) Program Guidelines*;
- The Department's *Policies and Procedures for Major Professional or Specialized Services Contracts* for contracts valued at or above \$50k; and,
- The Department's *Local Programs Management Handbook* for professional service contracts valued under \$50k.

Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Council 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.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Council shall not execute a consultant contract until the Department's review has been completed.

7. PROGRAM DELIVERY

The Council and the Department 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, and FHWA.

- a) The Department will allocate to the Council, on behalf of the MPO, its share of the Section 104(d) planning funds in accordance with the formula approved by the Department.

- b) The Council, on behalf of the MPO, will utilize its share of the Section 104(d) planning funds and required matching funds for carrying out provisions of Title 23, United States Code, Section 134, and related planning requirements.
- c) 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.
- d) All work shall be performed in accordance with the Department's procedures and guidelines. Said documentation shall be submitted to the Department for review and approval, where applicable. The Council, on behalf of the MPO, shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required. The Council, on behalf of the MPO, shall advertise and conduct any required public hearings.

8. REIMBURSEMENT

REIMBURSEMENT GUIDANCE

The Council 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." Reimbursement to the Council shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172 which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm. Reimbursement to the Council shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Council with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Council prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Council costs that exceed the total funding per this Agreement, any Supplemental Agreements or the approved annual UPWP.

- **UNSUBSTANTIATED COSTS**

The Council agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Council may bill the Department for eligible Project 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 Council certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement. The Council shall bill the Department quarterly. All invoices must be submitted and processed for payment as specified in TPB's *MPO Administration – Process MPO Invoices* procedure.

- **INTERNAL APPROVALS**

Reimbursement to the Council shall be made upon approval of the invoice by the Department's Financial Management Division.

9. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Council is responsible for submitting quarterly and final reports as specified in the TPB's *MPO Administration – Process MPO Invoices* procedure, currently located at https://connect.ncdot.gov/projects/planning/TransPlanManuals/Process%20MPO_invoices.pdf.

PROJECT RECORDS

The Council 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 Council 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 five (5) 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 Federal Government.

10. TERMINATION OF AGREEMENT

If the Council decides to terminate the Agreement without the concurrence of the Department, the Council shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Agreement.

The Agreement may be terminated by either party by giving 30 days written notice to the other party prior to the date of termination. If the Council and the Department mutually decide to terminate the Agreement, the costs expended to date by the Council will be reimbursed with the available funding.

If the Department terminates the Agreement for cause, then the Council may be liable for reimbursement of expended funds.

11. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Council to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Council agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

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

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Council shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

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

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.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Council for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Council.

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 Council shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Council 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 Council's fiscal year ends.

REIMBURSEMENT BY COUNCIL

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Council 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.

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.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

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, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

12. 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 automatically terminate 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 Council.

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

L.S. ATTEST:

LAND OF SKY REGIONAL COUNCIL

BY: *E. McCafferson*

BY: *[Signature]*

TITLE: *ECD Director*

TITLE: *Executive Director*

DATE: *6/29/15*

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by *Daana Stunshury* of the Land of Sky Regional Council as attested to by the signature of *Daana Stunshury* Clerk of the *Council Board* on *7/6/15* (Date)

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

Vicki Thomas
(FINANCE OFFICER)

Federal Tax Identification Number

56 - 1024369

Land of Sky Regional Council

Remittance Address:

339 New Leicester Hwy, Ste 140
Asheville NC 28806

DEPARTMENT OF TRANSPORTATION

BY: *[Signature]*
(CHIEF ENGINEER)

DATE: *7/1/15*

APPROVED BY BOARD OF TRANSPORTATION ITEM O: *7/9/2015* (Date)

