

**REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: March 20, 2019

SUBJECT: Mud Creek Greenway Feasibility Study Contract

PRESENTER: Janna Peterson, Planner III

ATTACHMENTS:

1. Land of Sky Regional Council Award Notice
2. Land of Sky Regional Council Vendor/Awardee Certification Forms
3. NCDOT STP-DA Funds Authorization

SUMMARY OF REQUEST:

On December 4, 2017, the Board directed staff to apply for funding from the French Broad River MPO (STBG-DA funds) for a greenway feasibility study along Mud Creek. This was in response to Commissioners Lapsley's discussions with NCDOT regarding Kanuga Road improvements and pedestrian mobility access. This half-mile greenway connection west of Mud Creek would extend from the new Publix to Erkwood Drive. The potential of this greenway has been discussed by the Village of Flat Rock and could provide for alternative cyclist and pedestrian mobility along the Kanuga Road corridor.

The FBRMPO awarded Henderson County \$40,000 (with a \$10,000 local match commitment from the County) to complete the Mud Creek Greenway Feasibility Study. A contract with Land of Sky is required if the Board decides to accept the grant funds and proceed with the feasibility study. The County is required to release an RFP to select a consultant to complete the feasibility study.

BOARD ACTION REQUESTED:

Formal action by the Board of Commissioners is necessary to accept the grant funds and authorize staff to sign the contract with Land of Sky Regional Council.

Suggested Motion: I move that the Board authorize County staff to accept the grant and continue with the RFP process for choosing a consultant.

Land of Sky Regional Council Award Notice

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| Type of Award: <input checked="" type="checkbox"/> Sub-Award <input type="checkbox"/> Purchase of Goods & Service | Contract No: New: Modification: N/A |
| Awardee | Land of Sky Regional Council |
| Henderson County 113 North Main Street Hendersonville, NC 28792 | Land of Sky Regional Council 339 New Leicester Hwy, Suite 140 Asheville, NC 28806 |
| 1. TIN/EIN: | 2. DUNS: |
| 3. Proposal/Project Title: Mud Creek Greenway Feasibility Study | 4. Source of Funding: Prime Sponsor: FHWA Federal Aid Number: (DA) PL-00PL (58) CFDA: 20.205 Federal Provisions Applicable: <u> X </u> <i>[if marked, complete attached Certification Forms in compliance with 2 CFR Part 200]</i> |
| Congressional Districts: Awardee: NC 11 Awardee Performance Area: NC 11 NC 10 | 5. Funding Information/Period of Performance: |
| | a. Amount Funded this Action: \$40,000 |
| | b. Amount Cost Share: \$10,000 |
| | c. Total Funds: \$50,000 |
| | d. Start Date: September 1, 2018 |
| | e. End Date: June 30, 2021 |
| <i>Each signatory below certifies that they are authorized to execute legally binding commitments on behalf of their named party.</i> | |
| Awardee Signature: _____ Name: Title: Date: _____ | Land of Sky Regional Council Signature: _____ Name: Justin Hembree Title: Executive Director Date: _____ |

| | |
|---|---|
| <p>Principal Contact: Name: Autumn Radcliff Phone: 828.697.4819 Email: autumnr@hendersoncountync.org</p> | <p>Principal Contact: Name: Tristan Winkler Phone: 828.251.7453 Email: tristan@landofsky.org</p> |
| <p>Finance Director: Name: Samantha Reynolds Phone: 828.697.4821 Email: sreynolds@hendersoncountync.org</p> | <p>LOSRC Financial Officer: Name: Vickie Thomas Phone: 828.251.6622 Email: vickie@landofsky.org</p> |
| <p>Remittance Address: Henderson County Finance Historic Courthouse Annex 113 North Main Street Hendersonville, NC 28792</p> | <p>Send Invoices to: Accounts Payable Land of Sky Regional Council 339 New Leicester Hwy, Suite 140 Asheville, NC 28806</p> |
| <p><i>This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.</i></p> | |
| <p>Signature: _____ Finance Officer: Vickie Thomas</p> | <p>Date: _____</p> |

INTERLOCAL MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made this **September 1, 2018** by and between Land of Sky Regional Council, hereinafter called the "Council", and Henderson County, hereinafter called the "County":

WITNESSETH

WHEREAS, the Council operates to provide planning and technical assistance to local governments and for region-wide projects in Region B as empowered by the North Carolina General Statutes and by resolution passed by the Planning Agency on April 17, 1972.; and

WHEREAS, this Interlocal Cooperation Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes; and

WHEREAS, the County requests that the Council provide technical assistance as detailed below; and

NOW, THEREFORE, the Council and the County mutually agree to the following:

1. Employment and Scope of Work

The County hereby agrees to engage the Council and the Council agrees to perform in a satisfactory and proper manner the work as described in the "Scope of Services" below.

a. 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 County; 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 2019 UPWP includes a Special Studies line item for Mud Creek Greenway Feasibility Study, as a sub-grant to the County of Henderson in the amount of \$50,000, with an applicable CFDA# for this sub-grant 20.205. The FBRMPO UPWP for FY 2019 allocates STBG funds flexed over to MPO PL funds for the special studies including the Mud Creek Greenway 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.

B. SCOPE OF WORK

Mud Creek Greenway Feasibility Study will consider the feasibility and potential alignment for a proposed section of greenway connecting White Street to Erwood Drive, generally parallel to Mud Creek, east of Kanuga Road and west of Greenville Highway, with additional considerations for connections to other existing- or future- greenways, bicycle and pedestrian facilities. The study will include a community engagement element and will provide estimated costs for implementation on preferred alignment (if any deemed feasible). The study will be managed by the County staff starting in FY 2019.

c. 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.

d. 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 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-DA 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.

2. Length of Contract

The Council shall ensure that all services required herein shall be undertaken and completed in such sequence as to assure expeditious completion of the purposes of this Contract with a completion date of **June 30, 2021**.

3. Compensation and Method of Payment

The County agrees to set aside the required match, \$10,000, for the Local Government portion of the project. Further, the County agrees to be responsible for reimbursing the contractor working on the study for 100% of the cost and requesting reimbursement for 80% federal PL funds portion from the Council. The amount of the aforementioned Project has been approved for funding by the Local Government in the amounts of:

- \$50,000 total cost of Mud Creek Greenway Feasibility Study
- \$40,000 federal PL funds
- \$10,000 local funds provided by the Local Government

a. Budget

The County agrees to provide local matching funds for the Project requested by the County and approved by the FBRMPO. The County agrees to fund a portion of FBRMPO approved Project cost as agreed upon and approved by the FBRMPO in the amounts approved 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, if applicable
- 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.

4. Assignment of Interests

The Council shall not assign any interest in this Agreement and shall not transfer any interest in the same whether by assignment or substitution, without the prior written consent of the County or unless specifically contained in the Scope of Services attached hereto.

5. Changes

The County may request changes in the scope of work or services to be performed by the Council hereunder. Such changes, including any increases or decreases in compensation, which are mutually agreed upon by and between the County and Council, shall be incorporated as written amendments to this Agreement.

6. 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.

7. Applicable Laws

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 Council 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 Agreement. The County is subject to the terms and conditions in the NCDOT Use of Planning (PL) and STP-DA Funds for Planning Activities Agreements (attached as Exhibit A).

8. Indemnification

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.

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.

9. E-Verify Provision

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that Land of Sky Regional Council, the Local Government named below, and the Local Government's subcontractors, complies 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

10. Attachments

The following attachments are made a part of this agreement by this reference:

- a. Exhibit A: NCDOT Use of Planning (PL) and STP-DA Funds for Planning Activities Agreements

11. Federal Funds

The County shall make all necessary inquiries to correctly identify the source of funding for Contract. If the source of funds for Contract is federal funds, the following federal provisions apply pursuant to **2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II** (as applicable), unless a more stringent state or local law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).

**LAND OF SKY REGIONAL COUNCIL
VENDOR/AWARDEE CERTIFICATION FORMS**

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

The following provisions are required and apply when federal funds are expended by LOSRC for any contract resulting from this procurement process.

(A) Procurement Standards. Codified at 2 CFR Subpart D (200.317-326) When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

Pursuant to Federal Rule (A) above, when federal funds are expended by LOSRC, LOSRC reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(B) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (B) above, when federal funds are expended by LOSRC, LOSRC reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(C) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (C) above, when federal funds are expended by LOSRC, LOSRC reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. LOSRC also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if LOSRC believes, in its sole discretion that it is in the best interest of LOSRC to do so. The vendor will be compensated for work performed and accepted and goods accepted by LOSRC as of the termination date if the contract is terminated for convenience of LOSRC. Any award under this procurement process is not exclusive and LOSRC reserves the right to purchase goods and services from other vendors when it is in the best interest of LOSRC.

(D) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the

definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (D) above, when federal funds are expended by LOSRC on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(E) Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms as noted in 2 CFR Subpart D (200.321). (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Pursuant to Federal Rule (E) above, when federal funds are expended by LOSRC, during the term of an award for all contracts and subgrants, the vendor will be in compliance with all applicable minority business procurement requirements by reference herein.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(F) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by LOSRC, during the term of an

award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(G) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (G) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(H) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (H) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(I) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (I) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(J) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (J) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(K) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (K) above, when federal funds are expended by LOSRC, the vendor certifies that during the term and after the awarded term of an award for all contracts by LOSRC resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –
2 CFR § 200.333**

When federal funds are expended by LOSRC for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH EPA REGULATIONS
APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS
IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

When federal funds are expended by LOSRC for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by LOSRC for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Signature of Authorized Representative: _____

Date: _____



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

NICHOLAS J. TENNYSON
SECRETARY

August 24, 2015

Mr. Tristan Winkler
Transportation Planner, FBRMPO
Land of Sky Regional Council
339 New Leicester Highway, Suite 140
Asheville, North Carolina 28806

Subject: French Broad River MPO, Executed STP-DA Agreement
Contract #: 7500019804

Dear Tristan:

Attached is the executed agreement for the use of STP-DA funds for planning activities. If you have any questions, please do not hesitate to call or email me at (919) 707-0909, ewthomas@ncdot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Earlene W. Thomas".

Earlene W. Thomas, P.E.
Western Unit Head, Transportation Planning Branch

cc: Patrick Norman, PE, Manager, Transportation Planning Branch
Brenden Merithew, Transportation Planning Branch

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
TRANSPORTATION PLANNING BRANCH
1554 MAIL SERVICE CENTER
RALEIGH NC 27699-1554



<https://connect.ncdot.gov/projects/planning/>

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH, NC 27601
Phone: 919-707-0900
Fax: 919-733-9794

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/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/legisregs/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: Emcafrison

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 Anna 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.iche Thomas
(FINANCE OFFICER)

Federal Tax Identification Number

56-1024369

Land of Sky Regional Council

Remittance Address:

339 New Leicester Hwy, Ste 140
Ashville NC 28806

DEPARTMENT OF TRANSPORTATION

BY: Thill
(CHIEF ENGINEER)

DATE: 7/31/15

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

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/legisregs/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.

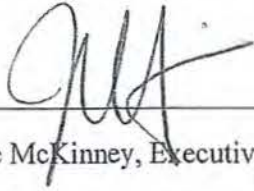
Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Agreement.

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.

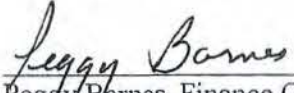
IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, in duplicate, on the part of the Department and of the Land-of-Sky Regional Council by authority duly given.

(Seal)

LAND-OF-SKY REGIONAL COUNCIL

BY: 
Joe McKinney, Executive Director

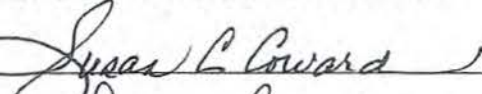
(SEAL)


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