

AGREEMENT OVERVIEW

NORTH CAROLINA
[], [], [] COUNTIES

DATE: [m/d/yyyy]

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

CFDA: []

AND

[LPA NAME]

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

SCOPE OF AGREEMENT: The purpose of this agreement is for the Rural Planning Organization to designate the Lead Planning Agency for their transportation planning and the requirements for the LPA to work with the Department.

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: When work is complete and all terms are met.

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 [LPA], hereinafter referred to as the **Agency**; and collectively referred to as the **Parties**.

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

I. WHEREAS STATEMENTS

WHEREAS, North Carolina General Statutes (NCGS) Chapter 136, Article 17, Section 211 authorizes the **Department** to form Rural Transportation Planning Organizations (RPOs) to carry out the duties as stated in NCGS Section 136-212; and

WHEREAS, the counties of [A], [B], and [C], and, where appropriate, the participating municipalities therein, have formed the [RPO Name] RPO (hereinafter referred to as the **RPO**), by means of a Memorandum of Understanding (MOU); and

WHEREAS, the **Agency** has been designated by the **RPO** and the **Department** as the Lead Planning Agency (LPA) for the **RPO** to be the administrative entity consistent with NCGS Section 136-213 to coordinate transportation planning in the **RPO** area, and to be the recipient of its share of the **RPO** planning funds as determined by the policy approved by the **Department**.

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

II. GENERAL PROVISIONS

A. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All **Parties** to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall maintain an active registration in the System for Award Management (SAM) as required by the Federal Funding Accountability and Transparency Act (FFATA) (See Appendix A-B).

B. AGREEMENT MODIFICATIONS

Any modification to the Agreement will be agreed upon by all **Parties** by means of an updated Agreement.

C. AGENCY TO PERFORM ALL WORK

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

D. PERSON IN RESPONSIBLE CHARGE

- i. The **Agency** shall designate a person or persons to be in responsible charge of the **RPO** Program. The person, or persons, shall ensure that:

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1. The **RPO** Program and Planning Work Program (PWP) are delivered,
 2. **RPO** Program activities, including those dealing with cost and time, are administered,
 3. Financial processes, transactions and documentation are reviewed,
 4. Direction is provided for program staff, agency, or consultant, to carry out program administration and contract oversight, including proper documentation; and
 5. The qualifications, assignments and on-the-job performance of the **Agency** and consultant staff are monitored.
- ii. The person in responsible charge must be a full-time employee of the **Agency** but the duties may be distributed as necessary.

E. COMPLIANCE WITH STATE/FEDERAL POLICY

The **Agency**, 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 (See Appendix C-H), including the most recent version of the Local Programs Management Handbook (See Appendix C) and Transportation Planning Division (TPD) procedures (See Appendix D-F) for administering the **RPO** planning process. Unless the **Department** provides written notice of a change in the **RPO** program policies or procedures, the **Agency** will be responsible for complying with all policies and procedures published at the beginning of the then-current fiscal year.

F. FAILURE TO COMPLY

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

III. SCOPE OF PROGRAM

The **Agency**, staffing and housing the RPO, shall use **RPO** Program funds to perform only work identified in the adopted Planning Work Program (PWP) each fiscal year. The PWP is prepared and implemented by the **RPO** staff as directed by the **RPO** Transportation Advisory Committee (TAC). The TAC shall adopt the PWP. The **Department** will review and approve the funding eligibility of PWP work elements. Federal funds shall be subject to federal eligibility rules and FHWA review.

IV. FUNDING

- i. The **Department** will allocate to the **Agency** a distribution of funds in accordance with the funding source and distribution method approved by the **Department**. Funding sources could include State Planning and Research (SPR) funds, state funds, or other funding sources as approved by the **Department**. Currently the **RPO** program, with the exception of the local match, is funded with SPR funds. If funding sources changes the LPA will be notified in writing of the funding change and eligibility requirements. At least a 90 day notice will be provided for a change in funding source that results in a reduction of funding
- ii. The **Agency** will utilize its share of the **RPO** planning funds and required matching funds to provide for professional services to carry out the provisions of NCGS 136, Article 17 and related PWP work elements.
- iii. Subject to compliance by the **Agency** with the provisions set forth in this Agreement and the availability of federal funds, the **Department** shall participate annually in a maximum of eighty percent (80%) of the total approved eligible costs covered under this Agreement up to the amount allocated for the fiscal year. The **Agency** shall provide a minimum twenty percent (20%) match and all costs that exceed the total annual budget amount.
- iv. Funding will be provided on an annual basis per the approved PWP and commensurate with state funding allocations and the distribution approved by the **Department**. The **Department** will notify the **Agency** of the allocated funding on an annual basis prior to the submission of a draft PWP.
- v. Should additional specific use or special studies funding be awarded, the award letter will provide an updated allocation. Additional specific use or special studies funds must be spent in accordance with the terms of those programs and funding sources.

V. TIME FRAME

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

VI. AUTHORIZATION

- i. The **Department** shall provide approval of the PWP in accordance with the **RPO** Manual. The **Department** will seek funding authorization from FHWA for the approved annual PWP prior to the start of the State Fiscal Year (SFY). The **Department** shall notify the **Agency** in writing once the funds have been federally authorized. Any costs incurred by the

Agency prior to federal authorization, submission of an adopted PWP and the start of the SFY shall not be eligible for federal reimbursement.

- ii. The **Agency** shall not initiate any work prior to submitting an adopted PWP and the start of the SFY.

VII. PROCUREMENT OF MATERIAL AND SERVICES

A. GOODS OR MATERIALS

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

B. PROFESSIONAL SERVICES

Small Professional and Engineering Services Firms Requirements

- i. Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions as specified by NCDOT procurement policy.

Procurement

- ii. When procuring professional services, the **Agency** must adhere to the following as applicable:
 - 1. TPD's Procurement of Consultant Services by MPO/RPO procedure;
 - 2. The **Department's** Small Professional Service Firm (SPSF) Program Guidelines;
 - 3. The **Department's** Policies and Procedures for Procurement and Administration of Major Professional or Specialized Services Contracts;
 - 4. Title 2 Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards;
 - 5. Title 23 Code of Federal Regulations, Part 172, Procurement, Management, and Administration of Engineering and Design Related Services.
- iii. The **Agency** shall ensure that a qualified firm is obtained through a qualifications-based selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

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- iv. All Professional Services Firms shall be pre-qualified by the **Department** in the Work Codes advertised.
- v. 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.
- vi. A pre-negotiation audit will be conducted by the **Department's** External Audit Division. The **Agency** shall not execute a consultant contract until the **Department's** review has been completed.
- vii. If the **Agency** fails to comply with these requirements, the **Department** will withhold funding until these requirements are met.

VIII. CONDITIONS OF ACCEPTANCE OF THE PROGRAM BY THE DEPARTMENT

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

IX. PROGRAM / PRODUCT DEVELOPMENT, DESIGN AND DELIVERY

- i. The **Agency** and/or its agent shall carry out the responsibilities of the **RPO** as specified in the annual PWP.
- ii. The **Agency** shall perform the planning work as required in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs for the purposes established in them. The work to be accomplished in a specific fiscal year shall be that work identified in the approved PWP.
 - 1. The **Agency** will utilize its allocated funds and required matching funds for carrying out provisions of Sections 136-210 – 136-213 of the NCGS and related core planning duties.
 - 2. All work shall be performed in accordance with the **Department's** published procedures and guidelines set forth in this Agreement.
- iii. The **Agency** shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required. The **Agency** shall advertise and conduct any required public hearings. Documentation shall be submitted to the **Department** for review and approval, where applicable.

X. REIMBURSEMENT

A. SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement shall be included in an approved annual PWP and shall not exceed the total funding allocation provided by the **Department**. The **Agency's** share of the **RPO** planning funds will be reimbursed upon submission of an invoice and any documentation required by the **Department** procedures (See Appendix D-F) for administering the **RPO** planning process.

B. REIMBURSEMENT GUIDANCE

The **Agency** shall adhere to applicable administrative requirements of 2 CFR, 200. Said reimbursement shall also be subject to the **Department** being reimbursed by the Federal Highway Administration and subject to compliance by the **Agency** with all applicable federal policy and procedures set forth in this Agreement.

C. REIMBURSEMENT LIMITS

Work Performed Before Notification

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

No Reimbursement in Excess of Approved Funding

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

Unsubstantiated and Ineligible Costs

- iii. The **Agency** agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable or ineligible by the Federal Highway Administration and/or the **Department**.

D. INVOICING THE DEPARTMENT

Invoicing

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

Procedure

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- ii. The **Agency** may invoice the **Department** for reimbursement of eligible **RPO** Program 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 **Agency** certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Internal Approvals

- iii. Reimbursement to the **Agency** shall be made upon approval of the invoice by the **Department**.

Invoice Frequency

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

Final Invoice

- v. Final invoices for each fiscal year should be submitted within sixty (60) days of the end of each state fiscal year. If the **Agency** is unable to invoice the **Department**, then they must provide an explanation and the **Department** may grant an extension. Failure to submit invoices within a six-month time period may result in de-obligation of funds.

XI. REPORTING REQUIREMENTS AND RECORDS RETENTION

The **Agency** and its agents shall maintain all books, documents, papers, accounting records, **RPO** Program 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 required records retention period laid out in 2 CFR, 200, for inspection and audit by the **Department**, the Federal Highway Administration, or any authorized representatives of the Federal or State Government. The current required record retention is three (3) years from the date of payment of the final invoice by the Federal Highway Administration.

XII. STANDARD PROVISIONS

A. AGREEMENT MODIFICATIONS

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

B. ASSIGNMENT OF RESPONSIBILITIES

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

C. AGREEMENT FOR IDENTIFIED PARTIES ONLY

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

D. OTHER AGREEMENTS

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

E. TITLE VI – CIVIL RIGHTS ACT OF 1964

i. The provisions of this section related to United States Department of Transportation (US DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) part 21, 23 United States Code (U.S.C.) 140 and 23 CFR part 200 (or 49 CFR 303, 49 U.S.C. 5332 or 49 U.S.C. 47123) are applicable to all NCDOT contracts and to all related subcontracts, material supply, engineering, architectural and other service contracts, regardless of dollar amount. Any Federal provision that is specifically required not specifically set forth is hereby incorporated by reference.

1. During the performance of this Agreement, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. **Compliance with Regulations:** The contractor or subrecipient (hereinafter includes consultants) will comply with the Acts and the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

b. **Nondiscrimination:** The contractor or subrecipient, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor or subrecipient for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - d. **Information and Reports:** The contractor or subrecipient will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
 - e. **Sanctions for noncompliance:** In the event of a contractor's or subrecipient's noncompliance with the nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding payments to the contractor under the contract until the contractor complies; and/or
 - ii. cancelling, terminating, or suspending a contract, in whole or in part.
 - f. **Incorporation of Provisions:** The contractor or subrecipient will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
2. During the performance of this Agreement, the contractor or subrecipient, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor")

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agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- i. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. All applicable Executive Orders;

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- k. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
3. NCDOT Title VI Nondiscrimination Program. 23 CFR 200.5(p): The North Carolina Department of Transportation (NCDOT) has assured the US DOT that, as a condition to receiving federal financial assistance, NCDOT will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by Title 49 CFR part 21 and related nondiscrimination authorities to ensure that no person shall, on the ground of race, color, national origin, limited English proficiency, income-level, sex, age, or disability, (or religion, where applicable) be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs, activities, or services conducted or funded by NCDOT. Contractors and other organizations under contract or agreement with NCDOT must also comply with Title VI and related authorities, therefore:
- a. During the performance of this contract or agreement, contractors (e.g., subcontractors, consultants, vendors, prime contractors) are responsible for complying with NCDOT's Title VI Program. Contractors are not required to prepare or submit Title VI Programs. USDOJ Title VI Legal Manual, VI(F);
 - b. Subrecipients (e.g. cities, counties, LGAs, MPO/RPOs) may be required to prepare and submit a Title VI Program to NCDOT, which may include Title VI Nondiscrimination Assurances and/or agreements. Subrecipients must also ensure that their contractors and subrecipients comply with Title VI. 23 CFR 200.9(b)(7); and
 - c. If reviewed or investigated by NCDOT, the contractor or subrecipient agrees to take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed 90 calendar days, unless additional time is granted by NCDOT. 23 CFR 200.9(b)(15).

F. AUTHORIZATION TO EXECUTE

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

G. 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 **Agency** 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.

H. INDEMNIFICATION

The **Agency** will indemnify and hold harmless the FHWA (if applicable), the **Department** and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability, including those that may be initiated by third parties, in connection with the Project activities performed pursuant to this Agreement including construction of the Project, except for those claims arising out of the errors, omissions, or negligence of the **Department**, its respective officers, directors, principals, employees, agents, successors, and assigns.

I. 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.

J. COUNTERPARTS AND ELECTRONIC SIGNATURES

- i. This Agreement, and other documents to be delivered pursuant to this Agreement, may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document and will be effective when counterparts have been signed by each of the **Parties**. An image of a manual signature on this Agreement, or other documents to be delivered pursuant to this Agreement, will constitute an original signature for all purposes. The delivery of copies of this Agreement or other documents to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Agreement or such other document for all purposes.
- ii. The **Parties** hereto further acknowledge and agree that this Agreement may be signed and/or transmitted by email or a PDF document or using electronic signature technology (e.g. DocuSign, Adobe Sign, or other electronic signature technology), and that such signed record shall be valid and as effective to bind the **Party** so signing as a paper copy bearing such **Party's** handwritten signature. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the electronic signature technology, the **Parties** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes a signature as if actually signed in writing. The **Parties** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its

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electronic signature. The **Parties** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the electronic signature technology, will have the same effect as physical delivery of the paper document bearing an original written signature.

K. GIFT BAN

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

XIII. ADDITIONAL PROVISIONS

A. TERMINATION OF AGREEMENT

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

B. REFERENCES

- i. It will be the responsibility of the **Agency** to follow the current and/or most recent published edition of Federal references, websites, specifications, standards, guidelines, recommendations, regulations and/or North Carolina General Statutes stated in this Agreement.
- ii. On the fifth anniversary of the execution of this Agreement, the **Parties** will review the terms of this Agreement to ensure that this Agreement is consistent with federal and state regulations:
 1. Federal Transportation Authorization legislation;
 2. 2 CFR 200;
 3. NCGS 136 Article 17;
 4. Funding source, or amount;
 5. SPR eligibility.

C. TITLE VII - EQUAL EMPLOYMENT OPPORTUNITY

Selection of Labor

During the performance of this AGREEMENT, the LPA will not discriminate against labor from any other STATE, possession or territory of the United States.

Employment Practices

During the performance of this AGREEMENT, the LPA agrees to comply with all applicable provisions of 49 CFR Part 21, 23 CFR Part 200 and Part 230 and the Civil Rights Act of 1964 as amended, and agree as follows:

- i. The LPA will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, age, handicap and/or disability. The LPA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, age, handicap or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this nondiscrimination clause.
- ii. The LPA will, in all solicitations or advertisements for employees placed by or on behalf of the LPA, state that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, national origin, sex, age, handicap and/or disability.
- iii. The LPA will send to each labor union or representative of workers with which the LPA has a collective bargaining agreement or other contract or understanding, a notice to be provided by the STATE, advising the labor union or workers' representatives of the LPA'S commitments under this AGREEMENT and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- iv. The LPA will comply with all applicable provisions of U.S. Presidential Executive Orders and will permit access to his books, records, and accounts by the U.S. Secretary of Labor or Labor Officials for purposes of investigations to ascertain compliance with such rules, regulations and orders.
- v. In the event of the LPA's noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of rules, regulations, or orders referenced hereinabove this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and the LPA may be declared ineligible for further Government contracts or Federally-assisted

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construction agreements in accordance with procedures authorized in applicable laws and regulations and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned U.S. Presidential Executive Order and regulations or as otherwise provided by law.

- vi. The LPA will include the provisions of the paragraphs in this section of this AGREEMENT in every subcontract or purchase order so that such provisions will be binding upon each subconsultant or vendor unless specifically exempted by rules, regulations, or orders of the U.S. Secretary of Labor.

D. IMPROPER/EXCESS USE OF FUNDS

Where either the **Department** or the FHWA determines that the funds paid to the **Agency** on behalf of the **RPO** were not used in accordance with the terms of this Agreement or deemed ineligible for reimbursement by federal funds, the **Department** may invoice the **Agency** for the ineligible expenditures.

E. AUDITS

In accordance with 2 CFR 200 Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the **Agency** shall arrange for an annual independent financial and compliance audit of its fiscal operations. The **Agency** shall furnish the **Department** with the annual independent audit report per NCGS 159-34. The Agencies compliance with NCGS 159-34 will meet the audit requirement. Any **Agency** not subject to NCGS 159-34 shall furnish the **Department** with a copy of their annual independent audit report.

F. REIMBURSEMENT BY AGENCY

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

G. USE OF POWELL BILL FUNDS

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

H. STATEMENT OF EQUITY CONSIDERATIONS

ACCOUNTS PAYABLE
[xxxxx] RURAL TRANSPORTATION
PLANNING ORGANIZATION
AGREEMENT ID # [xxxxx]

TPD is committed to a culture that embraces equity, diversity and inclusion in both the transportation planning process and the workplace. TPD encourages our planning partners to develop and implement equity statements and plans that consider policies, processes, procurement and contracting, decision-making, programs and activities to ensure they encompass and promote equity, diversity and inclusion, and are consistently applied.

XIV. SUNSET PROVISION

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

IT IS UNDERSTOOD AND AGREED that the approval of the **RPO** Program 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 Agency. The **Department** will not expend any funds if the Agency has not complied with pertinent state and federal regulations.

ACCOUNTS PAYABLE
[xxxxx] RURAL TRANSPORTATION
PLANNING ORGANIZATION
AGREEMENT ID # [xxxxx]

SIGNATURE PAGE

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

(DOCUSIGN ONLY)

[OTHER PARTY NAME]

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

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

Fed Tax ID No: _____

Finance Signer: _____

Remittance Address:

Print Name: _____

Title: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Print Name: _____

Title: _____

Date: _____

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

ACCOUNTS PAYABLE
[xxxxx] RURAL TRANSPORTATION
PLANNING ORGANIZATION
AGREEMENT ID # [xxxxx]

SIGNATURE PAGE

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

(INK SIGNATURES)

[OTHER PARTY NAME]

Attest:

Authorized Signer: _____

By: _____

Print Name: _____

Title: _____

Title: _____

Date Signed: _____

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

Fed Tax ID No: _____

Finance Signer: _____

Remittance Address: _____

Print Name: _____

Title: _____

Date Signed: _____

(DOCUSIGN)

DEPARTMENT OF TRANSPORTATION

By: _____

Print Name: _____

Title: _____

Date: _____

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