

NORTH CAROLINA
COUNTY OF MECKLENBURG

THE DEPARTMENT OF TRANSPORTATION, AN AGENCY
OF THE STATE OF NORTH CAROLINA

AND

CITY OF CHARLOTTE

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

THIS AGREEMENT made and entered into this the 19TH day of AUGUST, 1993 between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF CHARLOTTE, hereinafter referred to as the Municipality;

W I T N E S S E T H:

WHEREAS, Section 134(a) of Title 23 United States Code states:

"It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.

WHEREAS, Section 112 of the Federal-Aid Highway Act of 1973, amended Subsection (f) of Section 104 of Title 23, United States Code, and states:

"(1) On October 1, of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section shall set aside not to exceed 1 percent of the remaining funds authorized to be appropriated for expenditure upon programs authorized under this title, for the purpose of carrying out the requirements of section 134 of this title, except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the Interstate construction and Interstate substitute programs.

(2) These funds shall be apportioned to the States in the ratio which the population in urbanized areas, or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per cent of the amount apportioned.

(3) The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120(j) of this title unless the Secretary determines that the interests of the Federal-Aid highway program would be best served without such matching.

(4) The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable requirements of Federal law; and

(5) DETERMINATION OF POPULATION FIGURES.--For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

WHEREAS, the Municipality has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the 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 the Section 104(f) planning funds, as determined by the policy adopted by the Board of Transportation for the Department in its meeting of October 2, 1992, which is attached hereto as Attachment A and incorporated herein and made a part of this Agreement;

NOW, THEREFORE, in consideration of the promises and benefits accruing to the Department and the Municipality as the result of performing these planning services, it is agreed as follows:

Section 1. Scope and Purpose of Work

The Municipality 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 Municipality and approved by the Transportation Advisory Committee of the Metropolitan Planning Organization, the Department, and the U. S. Department of Transportation.

Section 2. Work Procedure Requirements

(a) The Department will allocate to the Municipality its share of the Section 104(f) planning funds in accordance with the policy adopted by the Board of Transportation on October 2, 1992, (Attachment A), and the Municipality will cooperatively perform required planning work in accordance with said policy.

(b) The Municipality'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. The allowability of direct salary cost, payroll additive cost, and travel and transportation cost shall be in conformance with Federal Aid Policy Guide, Part 140, Subpart G, and additions or amendments thereto. Should the municipality elect to recover indirect costs, a cost allocation plan conforming to Office of Management and Budget Circular A-87, dated January 15, 1981, and additions or amendments thereto, shall be prepared and submitted to the Department for approval.

(c) The Municipality 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.

(d) 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 the Federal Highway Administration, shall apply in the performance of all work under this Agreement.

(e) The Municipality'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.

(f) Quarterly progress reports and invoices will be submitted by the Municipality to the Statewide Planning Branch, Division of Highways, 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 of the City of Charlotte of the expenditures under the Section 104(f)

planning program and other Municipal funds expended during the year for all Municipal work provided for in the Planning Work Program.

(g) The Municipality 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.

(h) The Municipality 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.

(i) The Municipality shall bear all the cost of any work found not to be in compliance and the cost of any work not approved by the Federal Highway Administration.

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

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

Section 3. Period of Performance

This Agreement will become effective upon execution by all parties 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.

Section 4. Accounting Records

(a) The Municipality will be responsible for the establishment and maintenance of an accounting system for its planning work as set out in this Agreement.

(b) The Municipality shall keep records in such a manner as to show the nature of each cost making up the total cost. All direct costs incurred applicable to work under this Agreement must be supported by documents such as time sheets, travel logs, receipts, invoices, or other suitable evidence. The accounting procedures which are established for planning work as set out in this Agreement must be in accordance with generally acceptable accounting principles and reviewed and approved by the Department and the Federal Highway Administration in accordance with established procedures.

(c) In accordance with OMB Circular A-128 , and additions or amendments thereto, the Municipality shall arrange for independent financial and compliance audits of its fiscal operations. The audit is to determine (1) financial operations are conducted properly, (2) financial statements are presented fairly, (3) the Municipality has

complied with laws and regulations affecting the expenditure of Federal funds, (4) internal procedures have been established to meet the objectives of federally assisted programs, and (5) financial reports to the Federal Government contain accurate and reliable information. Such audits usually will be made annually, but not less frequently than every two years. Two copies of the independent audit report are to be submitted to the Statewide Planning Branch, Division of Highways, North Carolina Department of Transportation.

(d) The Municipality and consultants employed by the Municipality shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred for a period of not less than three (3) years from date of final payment. Such records will be available for inspection and audit by the Department or the Federal Highway Administration.

(e) All consultants employed by the Municipality using Section 104(f) Planning Funds as set forth in this Agreement must maintain accounting records in full compliance with the provisions of subparagraphs (b) and (d) above, and be approved by the Department and the Federal Highway Administration.

(f) It is further understood and agreed that in the event the U. S. Department of Transportation fails to participate in any cost of any portion of work provided for herein because of noncompliance with Federal and State regulations, the cost of such work found to be in noncompliance shall be borne fully by the Municipality.

Section 5. Required Contract Provisions for Federal-Aid Contracts

(a) The Municipality shall comply with the Equal Opportunity Provisions of the Required Contract Provisions for Federal-Aid Contracts in accordance with Attachment B, which is attached hereto and incorporated herein and made a part of this Agreement.

(b) The Municipality shall comply with the subcontracting provisions as contained in the Federal Aid Policy Guide, Part 172, and additions or amendments thereto.

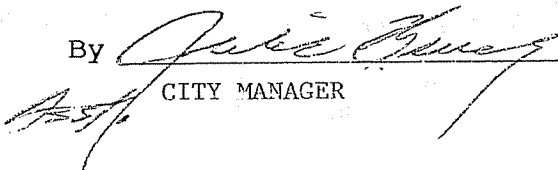
IN WITNESS WHEREOF, this Agreement has been executed the day

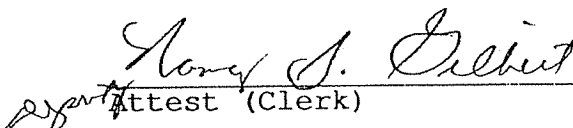
and year heretofore set out, in triplicate, on the part of the Department and of the Municipality by authority duly given, as evidenced by the attached certified copy of resolution, ordinance, or charter provision, as the case may be.

(Seal)

CITY OF CHARLOTTE

By

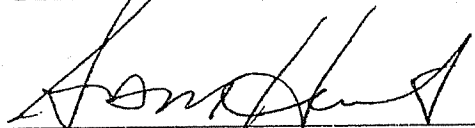

CITY MANAGER


Attest (Clerk)

(Seal)

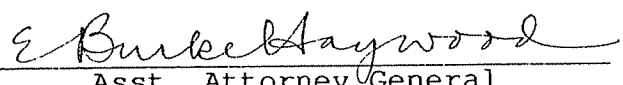
NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

By

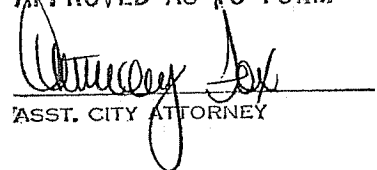

Secretary of Transportation

as to form and
Approved For Execution

By


Asst. Attorney General

APPROVED AS TO FORM


ASST. CITY ATTORNEY

ATTACHMENT A

Policy covering the allocation and use of Federal planning funds provided by Section 104(f) of Title 23, United States Code, to designated planning organizations in North Carolina.

WHEREAS, The Congress of the United States through its enactment of the Federal-Aid Highway Act of 1973 has authorized planning funds to be apportioned to the State and organizations designated by the State for carrying out of a continuing, cooperative, and comprehensive urban transportation planning process; and,

WHEREAS, the Federal-Aid Highway Act of 1973 and subsequent amendments to the Act provides that the Federal planning funds provided by Section 104(f) shall be distributed by the State to the designated planning agencies in accordance with a formula developed by the State and approved by the U.S. Secretary of Transportation and said formula shall be based on consideration of, but not necessarily limited to, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 135 and other applicable requirements of Federal law; and

WHEREAS, it is the sincere desire of the N.C. Board of Transportation and the North Carolina Department of Transportation to do everything possible to assure the accomplishment of effective and efficient urban transportation planning processes for all of the urbanized areas with the State.

NOW THEREFORE, pursuant to the authority granted by G.S. 136-44.2, the Board of Transportation adopts the following policy covering the allocation and use of Federal funds provided by Section 104(f) of Title 23, United States Code:

1. Federal funds provided to the State of North Carolina under Section 104(f) of Title 23 are to be allocated to the planning agency designated by the Governor for each of the urbanized areas.
2. These funds are to be distributed to the planning agency so designated on the basis of the following formula: 50 percent of the funds to be distributed in direct proportion to the population of each of the urbanized areas, and the remaining 50 percent to be distributed equally between the designated urbanized areas.

3. The designated planning agency shall be responsible for the use and administration of these funds and shall be responsible for providing the funds required to match the Federal funds.
4. The funds distributed to the designated planning agencies are to be used for the purpose of carrying out urban transportation planning as required by Section 134, Title 23, U. S. Code.
5. The designated planning 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.
6. In the event any of the designated planning agencies are not able to utilize (obligate) these Section 104 (f) funds within three years, the funds not obligated will be made available to any of the remaining designated planning agencies on the basis of requests received and need as determined by the staff of the Department of Transportation; or will be used by the planning staff of the Department of Transportation for surveys, studies, or research projects that will be of benefit to all urbanized areas in the State.
7. The reallocation of unused Section 104(f) funds or use of these funds by the Department planning staff will be approved by the Board of Transportation.

As adopted by the North Carolina Board of Transportation at their meeting on October 2, 1992.

ATTACHMENT B

EQUAL OPPORTUNITY PROVISIONS for FEDERAL-AID CONTRACTS

1. Selection of Labor

During the performance of this Agreement, the Municipality will not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices

During the performance of this Agreement, the Municipality agrees to comply with all applicable provisions of 49 CFR 21 through Appendix H and 23 CFR 710.405(b) and the Civil Rights Act of 1964 as amended, and agrees as follows:

- a. The Municipality will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Municipality will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color or national origin. 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 Municipality 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.
- b. The Municipality will, in all solicitations or advertisements for employees placed by or on behalf of the Municipality, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- c. The Municipality will send to each labor union or representative of workers with which he 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 Municipality's commitments under this Attachment and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Municipality will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

- e. The Municipality will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.
 - f. In the event of the Municipality's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Municipality may be declared ineligible for further Government contracts or Federally-assisted construction Agreements in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) and such other sanctions may be imposed and remedies invoked as provided in the aforementioned Executive Order and regulations or as otherwise provided by law.
 - g. The Municipality will include the provisions of this paragraph 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of the Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.
3. Selection of Subcontractor, Procurements of Materials and Leasing of Equipment
- During the performance of this Agreement, the Municipality, for itself, its assignees, and successors in interest (herein referred to as the "Municipality") agrees as follows:
- a. Compliance with Regulations: The Municipality will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and 23 CFR 710.405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
 - b. Nondiscrimination: The Municipality with regard to the work performed by them after award and prior to completion of the Agreement work, will not discriminate on the ground of race, color, or national origin, in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Municipality will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the

- Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations: In all solicitations either by competitive bidding or negotiations made by the Municipality for work to be performed under a subcontract, including procurement of material or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the Municipality of the Municipality's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
 - d. Information and Reports: The Municipality will provide all information and reports required by the Regulations, or orders and instructions 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 State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Municipality or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Municipality will so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.
 - e. Sanctions for Noncompliance: In the event of the Municipality's or Contractor's noncompliance with the nondiscrimination provisions of this paragraph 3, the State shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - (1) withholding of payments to the Municipality under the Agreement until the Municipality complies, and/or
 - (2) cancellation, termination or suspension of the Agreement in whole or in part.
 - f. Incorporation of Provisions: The Municipality will include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Municipality will take such action with respect to any subcontract, procurement or leases as the State may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Municipality becomes involved in, or is threatened with litigation with a subcontractor, or lessor as a result of such direction, the Municipality may request the State to enter into such litigation to protect the interests of the State, and in addition, the Municipality may request the United States to enter into such litigation to protect the interests of the United States.

- g. For contracts and subcontracts of amounts in excess of \$100,000 the Municipality will comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (43 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1386), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency List of Violating Facilities. The Municipality will report violations to the grantor agency and to the U.S.E.P.E. Assistant Administrator for Enforcement (N-329).

RESOLUTION

RESOLUTION APPROVING REVISED AGREEMENT BETWEEN THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION AND CITY OF CHARLOTTE FOR DISBURSEMENT AND ACCOUNTING OF PLANNING FUNDS APPROPRIATED UNDER SECTION 104(f) OF TITLE 23 UNITED STATES CODE.

THAT WHEREAS, Section 104(f) of Title 23 United States Code provides planning funds to be apportioned to the State of North Carolina to be made available to metropolitan planning organizations designated by the State for carrying out a continuing, cooperative, and comprehensive urban transportation planning process; and

WHEREAS, the Charlotte-Mecklenburg Planning Commission has been designated as the Lead Planning Agency for the Charlotte Metropolitan Area to cooperatively perform the planning work with the Department of Transportation and to be recipient of the planning funds provided by Section 104(f) of Title 23 United States Code; and

WHEREAS, the City of Charlotte and the Department of Transportation have previously entered into an agreement for disbursement and accounting of the planning funds, said agreement being dated August 17, 1983; and


WHEREAS, it has been determined by the City Council of the City of Charlotte and the Department of Transportation that a revised agreement is desirable as a result of changes in Federal Regulations.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:

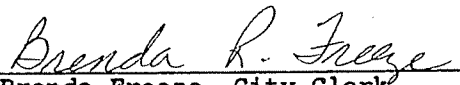
That the revised Agreement for Disbursement and Accounting of Urban Transportation Planning Funds appropriated under Section 104(f), Title 23 United States Code, between the North Carolina Department of Transportation and the City of Charlotte is hereby approved.

That the City Manager be authorized, designated, and empowered in the name of, on behalf of, the City of Charlotte to: (1) execute said Agreement; (2) accept any funds extended; (3) make any required assurances; (4) furnish any information and documents that may be required in connection therewith; and (5) execute any necessary documents as may be required.

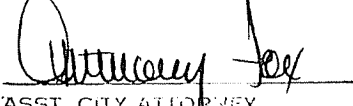
Adopted by Charlotte City Council in regular session on
June 28, 1993.


Richard Vinroot, Mayor

ATTEST:


Brenda Freeze, City Clerk

APPROVED AS TO FORM


ASST. CITY ATTORNEY

CERTIFICATION

I, Nancy S. Gilbert, Deputy City Clerk of the City of Charlotte, North Carolina, do hereby certify that the foregoing is a true and exact copy of a Resolution adopted by the City Council of the City of Charlotte, North Carolina in regular session convened on the 28th day of June, 1993, the reference having been made in Minute Book 102 and recorded in full in Resolution Book 31, Page(s) 206-207.

WITNESS my hand and corporate seal of the City of Charlotte, North Carolina, this the 30th day of June, 1993.



Nancy S. Gilbert, Deputy City Clerk