

North Carolina
County of Forsyth

The Department of Transportation, an Agency
Of the State of North Carolina

Disbursement
And Accounting of
Transportation
Funds Appropriated
Under Section
133(b) (7),
Title 23
United States Code

And

City of Winston-Salem

This Agreement made and entered into this the 1st day of December, 2003 between the Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the Department, and the City of Winston-Salem, hereinafter referred to as the Municipality;

Witnesseth:

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

It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution. To accomplish the objective stated in paragraph (1), metropolitan planning organizations designated under subsection (b), in cooperation with the State and public transit operators, shall develop transportation plans and programs for urbanized areas of the State. The plans and programs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an inter-modal transportation system for the State and the United States. The process for developing the 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 to be addressed.

WHEREAS, the Municipality has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the Winston-Salem Urban Area Metropolitan Planning Organization to be responsible for carrying out the provisions of Section 134, Title 23, United States Code.

WHEREAS, Transportation planning funds are currently being provided to the Municipality by the Department under an Agreement for DISBURSEMENT AND ACCOUNTING OF URBAN TRANSPORTATION PLANNING FUNDS APPROPRIATED UNDER SECTION 104(f), TITLE 23 UNITED STATES CODE, dated July 8, 1993.

WHEREAS, Section 133 (b), Title 23, United States Code, provides that a State may obligate funds apportioned to it under section 104 (b) (3) for the Surface Transportation Program for the following eligible project:

“(7) Surface transportation planning programs.”

AND WHEREAS, the State has obligated Surface Transportation Program Direct Appropriation Funds (STP-DA) apportioned to it under section 104 (b) (3) to the Winston-Salem Urban Area.

NOW THEREFORE, in consideration of the promises and benefits accruing to the Department and the Municipality as the result of performing these transportation 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 Unified Planning Work Program (UPWP) prepared by the Municipality and approved by the Transportation Advisory Committee of the Metropolitan Planning Organization (MPO), the Department, and the U. S. Department of Transportation.

Section 2. Work Procedure Requirements

- (a) The Department will make available to the Municipality STP funds as provided for in the Winston-Salem Urban Area Metropolitan Transportation Improvement Program (MTIP) and State Transportation Improvement Program (STIP), and the Municipality will cooperatively perform the required planning work as provided for in the approved UPWP.
- (b) The Municipality's STP planning funds must be matched on an 80-20 basis (80 percent STP 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 approved use 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 the Office of Management and Budget Circular A-87 and additions or amendments thereto, shall be prepared and submitted to the Department for approval.

- (c) The Municipality will use STP funds and required matching funds in aggregate with Section 104 (f) planning 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 STP planning funds will be provided in aggregate with the Section 104 (f) planning funds quarterly on a reimbursable basis upon submission of a quarterly progress report and a quarterly invoice. The total amount of STP funds to be provided for a fiscal year will be in accordance with the amount specified in the approved UPWP.
- (f) Quarterly progress reports and invoices will be submitted by the Municipality to the Statewide 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 UPWP in narrative form and by estimated percentage of work completed. The invoice should include a statement and certification by the Director of Finance of the City of Winston-Salem of the expenditures under the planning program and other Municipal funds expended during the year for all Municipal work provided for in the UPWP.
- (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 and Cooperative Agreements 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 UPWP.

- (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 on January 1, 2004 and will remain in effect until revised or until the STP 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 cost 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-133, Audits of States, Local Governments and Non-Profit Organizations@ (www.whitehouse.gov/wh/eop/omb), the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality 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 (March 31st) after the Municipality's fiscal year ends.
- (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 STP funds for planning 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 or State regulations, the cost of such work found to be in noncompliance shall be borne fully by the Municipality.

Section 5. Contract Changes

Any proposed major changes in this contract that would result in change in the scope, character, or complexity of the contract, shall require a supplemental agreement. Any proposed minor changes in this contract shall be submitted to the Department for its prior approval.

Section 6. Prohibited Interest

No member, officer, or employee of the Department or employee of the Municipality shall have any financial interest, direct or indirect, in this contract or the proceeds there-from.

Section 7. Disadvantaged Business Enterprise (DBE)

(a) Policy

It is the policy of the Department that minority business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this Agreement.

(b) MBE Obligation

- (1) The Municipality or its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. The Municipality or its contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Municipality or its contractors shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of DOT-assisted contracts. Failure by the Municipality or its contractors to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deem appropriate.

- (2) Each contract that the municipality signs with a contractor, and each subcontract that is signed, must include the following assurance:

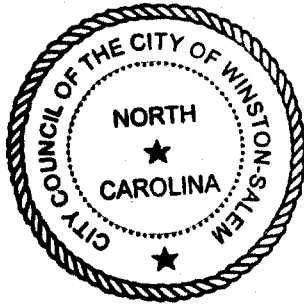
The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Section 8. 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 A, 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 Winston-Salem

By: *[Signature]*
City Manager

Date: 1/6/04

Attested By: *[Signature]*
City Clerk

(Seal)

North Carolina Department of Transportation

By: *[Signature]*
Manager of Statewide Planning Branch

Date: 15 January 2004

Approved As To Form

By: *[Signature]*
Assistant Attorney General

Date: 1/20/2004

Pre-audit Certificate

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

By: *[Signature]*

Date: 12/29/03

Approved as to form and legality.

This 5 January 2004

By *[Signature]*

Attachment A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referring to as the contractor), agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 23, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination: The contractor, with regard to the work performed by it during the contract, shall 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 shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set fourth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the North Carolina Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the North Carolina Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the North Carolina Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,

- (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) Cancellation, termination or suspension of the contract in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or orders and instructions issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the North Carolina Department of Transportation (NCDOT) or the Federal Highway Administration (FHWA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the NCDOT to enter such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigations to protect the interests of the United States.