

NORTH CAROLINA

**DOWN EAST RURAL TRANSPORTATION
PLANNING ORGANIZATION**

CARTERET, CRAVEN, PAMLICO, JONES
COUNTIES

DATE: 06/17/2021

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

EASTERN CAROLINA COUNCIL

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 Eastern Carolina Council, hereinafter referred to as the "Agency".

WITNESSETH:

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 Carteret, Craven, Pamlico, Jones and, where appropriate, the participating municipalities therein, have formed the Down East Rural Transportation Planning Organization (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 (hereinafter referred to as the 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:

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 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).

AGREEMENT MODIFICATIONS

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

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.

PERSON IN RESPONSIBLE CHARGE

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

- a. The RPO Program and Planning Work Program (PWP) are delivered,
- b. RPO Program activities, including those dealing with cost and time, are administered,
- c. Financial processes, transactions and documentation are reviewed,
- d. Direction is provided for program staff, agency or consultant, to carry out program administration and contract oversight, including proper documentation; and

- e. The qualifications, assignments and on-the-job performance of the agency and consultant staff are monitored.

The person in responsible charge must be a full-time employee of the Agency but the duties may be distributed as necessary.

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.

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.

2. 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.

3. FUNDING

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

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.

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.

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.

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.

4. 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).

5. AUTHORIZATION

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.

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

6. PROCUREMENT OF MATERIAL AND SERVICES

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.

PROFESSIONAL SERVICES

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 as specified by NCDOT procurement policy.

PROCUREMENT

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

- TPD's Procurement of Consultant Services by MPO/RPO procedure;
- The Department's Small Professional Service Firm (SPSF) Program Guidelines;
- The Department's Policies and Procedures for Procurement and Administration of Major Professional or Specialized Services Contracts;
- Title 2 Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards;
- Title 23 Code of Federal Regulations, Part 172, Procurement, Management, and Administration of Engineering and Design Related Services.

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.

All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.

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.

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.

If the Agency fails to comply with these requirements, the Department will withhold funding until these requirements are met.

7. 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.

8. PROGRAM / PRODUCT DEVELOPMENT, DESIGN AND DELIVERY

The Agency and/or its agent shall carry out the responsibilities of the RPO as specified in the annual PWP.

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.

- a) 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.
- b) All work shall be performed in accordance with the Department's published procedures and guidelines set forth in this Agreement.

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.

9. REIMBURSEMENT

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.

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.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

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**

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**

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.

INVOICING THE DEPARTMENT

- **INVOICING**

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**

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**

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

- **INVOICE FREQUENCY**

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**

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.

10. 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.

11. OTHER PROVISIONS

REFERENCES

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.

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:

- Federal Transportation Authorization legislation;
- 2 CFR 200;
- NCGS 136 Article 17;
- Funding source, or amount;
- SPR eligibility

INDEMNIFICATION OF DEPARTMENT

The Agency 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 the Agency under this Agreement. 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 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.

TITLE VI - CIVIL RIGHTS ACT OF 1964

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.

- a. 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:
 1. **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.
 2. **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.
 3. **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.

4. 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.

5. 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:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating, or suspending a contract, in whole or in part.

6. 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.

- b. During the performance of this Agreement, the contractor or subrecipient, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- 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.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 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;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- 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);
- 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);
- 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;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 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).

c. 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:

- i. 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);
- ii. 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
- iii. 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).

TITLE VII - Equal Employment Opportunity

1. 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.

2. 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:

- a. 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.
- b. 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.
- c. 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.
- d. The LPA will comply with all provisions of U.S. Presidential Executive Order No. 11246 as amended by Executive Order 11375, and other Orders and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60).
- e. The LPA will furnish all information and reports required by Executive Order No. 11246 as amended by Executive Order 11375, and other Orders, and as supplemented in U.S. Department of Labor regulations (41 CFR Chapter 60), 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.

- f. 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 construction agreements in accordance with procedures authorized in Executive Order No. 11246 as amended by Executive Order 11375 and other Orders 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.
- g. 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 issued pursuant to Section 204 of the U.S. Presidential Executive Order No. 11246.

OTHER AGREEMENTS

The Agency is solely responsible for all agreements, contracts, and work orders entered into or issued by the Agency for the RPO Program. The Department is not responsible for any expenses or obligations incurred for the RPO Program except those specifically eligible obligations as approved 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 terminate after 90 days written notice by the Department to the Agency that funds cease to be available.

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.

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.

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.

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.

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.

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).

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 they have read this Agreement, conferred with their attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

STATEMENT OF EQUITY CONSIDERATIONS

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.

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 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.

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 Agency by authority duly given.

EASTERN CAROLINA COUNCIL

BY: DocuSigned by: Kate J. Bondeau
A0D46D5E782F4D4...

TITLE: Executive Director

DATE: 7/9/2021

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.

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

(SEAL)

DocuSigned by: Jenny Miller
(FINANCE OFFICER) 19AD09A0E2825F...

Federal Tax Identification Number
560904407

Eastern Carolina Council

Remittance Address:
PO Box 1717
New Bern, NC 28560

DEPARTMENT OF TRANSPORTATION

BY: DocuSigned by: Jamal Alavi
(Director of Transportation Planning Division) 480380163DAA48A...

DATE: 7/12/2021

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 7-1-2021 (Date)

Appendices

The document versions hyperlinked are current as of April 7, 2021. It is the responsibility of the Agency to ensure compliance of the with the most recent version of regulations, procedures and guidance.

Appendix A

Federal Funding Accountability and Transparency Act (FFATA)

<https://www.fsr.gov/>

Appendix B

Title 2 Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR 200)

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

Appendix C

Local Programs Management Handbook:

<https://connect.ncdot.gov/municipalities/Funding/Pages/LPM%20Handbook.aspx>

Appendix D

Revised and Updated RPO Manual

[https://connect.ncdot.gov/projects/planning/TPB%20Documents/RPO_Manual_2018_Revised_10-19_Updated_1-28%20\(CURRENT\).pdf](https://connect.ncdot.gov/projects/planning/TPB%20Documents/RPO_Manual_2018_Revised_10-19_Updated_1-28%20(CURRENT).pdf)

Appendix E

MPO and RPO Administration Manuals

<https://connect.ncdot.gov/projects/planning/Pages/TPManualsMPO-RPO.aspx>

Appendix F

TPD's Procurement of Consultant Services by MPO/RPO procedure:

https://connect.ncdot.gov/projects/planning/TransPlanManuals/MPOprocedure_Procurement%20of%20Consultants_final.pdf

Appendix G

The Department's Small Professional Service Firm (SPSF) Program Guidelines:

<https://connect.ncdot.gov/business/SmallBusiness/Documents/SPSF%20Guidelines.pdf>

Appendix H

The Department's Policies and Procedures for Procurement and Administration of Major Professional or Specialized Services Contracts:

<https://connect.ncdot.gov/business/consultants/Roadway/Policy%20and%20Procedures%20for%20Procurement%20and%20Administration%20of%20Major%20Professional%20or%20Specialized%20Services%20Contracts.pdf>