

**CONTRACT AGREEMENT
FOR
LEWIS COUNTY
TRANSPORTATION PLANNING ASSISTANCE**

THIS AGREEMENT dated for reference purposes July 1, 2016, is entered into by and between the Cowlitz-Wahkiakum Council of Governments, a municipal corporation (hereinafter referred to as "COG"), and **LEWIS COUNTY**, a municipal corporation of Washington State (hereinafter "Agency"), collectively the "Parties" and individually the "Party."

RECITALS

WHEREAS, COG is a regional planning agency organized under RCW 36.64.080 to serve general and special purpose governments in the Cowlitz-Wahkiakum region; and

WHEREAS, the general purpose governments of Cowlitz, Grays Harbor, Pacific, and Wahkiakum Counties have formed, through an Interlocal Agreement effective December 1990 and amended to include Lewis County March 1992, the Southwest Washington Regional Transportation Planning Organization pursuant to RCW 36.70A; and

WHEREAS, the COG and Agency are signatories to that Interlocal Agreement; and

WHEREAS, the Interlocal Agreement mentioned above designates the COG, then known as the Cowlitz-Wahkiakum Governmental Conference, as the lead planning agency, and that the COG shall coordinate development of the regional transportation plan with the Agency; and

WHEREAS, the Washington State Department of Transportation's appropriation for the Southwest Washington Regional Transportation Planning Organization (SWRTPO) shall be distributed annually to the COG as the lead planning agency, who shall then distribute an identified share to the Agency, less an amount agreed to for fiscal and program management activities, for the performance of regional transportation planning activities for and in Lewis County as outlined in the Scope of Services.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

- 1.1 The Agency agrees to perform and complete the work as described in Exhibit A – Scope of Work (hereinafter referred to as "work"), attached hereto and by this reference made a part of this Agreement.
- 1.2 The COG agrees to reimburse the Agency for the work as provided in Section 3 of this Agreement and as defined in Exhibit B – Compensation Rate, attached hereto and by this reference made a part of this Agreement.
- 1.3 This contract incorporates in its entirety Agreement No. GCB 1764, between the Washington State Department of Transportation and the Cowlitz-Wahkiakum Council of Governments which is attached hereto as Exhibit C and made a part of this agreement. This agreement recognizes the SWRTPO and how it is to be administered. The Agency agrees to adhere to all terms and conditions of the above-referenced agreement, except as modified by this contract.

2. COG and AGENCY RESPONSIBILITIES

2.1 COG RESPONSIBILITIES

- 2.1.1 The COG shall coordinate the five (5) county Regional Transportation Planning Organization (RTPO) and those projects identified in the Unified Planning Work Program (UPWP) for this fiscal period.
- 2.1.2 The COG will be responsible for administering all federal, state and local funds allocated to the five (5) county RTPO from the State of Washington.

2.2 AGENCY RESPONSIBILITIES

- 2.2.1 The Agency shall confer and coordinate with the COG on a regular basis.
- 2.2.2 The Agency shall prepare and present written monthly progress reports throughout the course of the work program's fiscal year in accordance with the WSDOT reporting requirements. A report shall always accompany a reimbursement request when made.
- 2.2.3 At the conclusion of the fiscal year 2016, the Agency shall prepare and submit to the COG a final progress report in a format determined by the COG as prescribed in Exhibit A – Scope of Work, Anticipated Deliverables.
- 2.2.4 As part of the annual Scope of Work for the region, the five (5) Counties in turn host the annual meeting of the Southwest Washington RTPO. In the year that the Agency is assigned to host, it is responsible to provide the meeting room, refreshments and other necessary elements in support of the annual meeting; however, any and all costs related to the annual meeting are not considered part of this contract and may be submitted to the COG for reimbursement in full above and beyond the total amount of this agreement.

3. PAYMENT

- 3.1 The COG, in consideration of the faithful performance of the services to be provided by the Agency as described in Exhibit A – Scope of Work, agrees to reimburse the Agency for actual direct and related indirect costs of the work to a not-to-exceed maximum amount of \$25,000, as established in this Agreement.
- 3.2 The compensation rate for services to be provided by COG is marked Exhibit B – Compensation Rates, and is attached hereto and by this reference made a part of this Agreement.
- 3.3 The Agency shall request reimbursement of funds as they are expended on work program activities. Such requests for reimbursement shall document the amount of the funds expended during the work program fiscal year, as well as for the current billing period, and shall include reports identified in Exhibit A, in a format approved by COG.
- 3.4 To ensure payment, the Agency shall either email or mail via United States Postal Service invoices and appropriate supporting materials to:

CWCOG / Administration Annex
207 4th Avenue North
Kelso, WA 98626

OR email same to appropriate contact in Section 7 of this Agreement.

- 3.5 The Agency's requests must be made monthly, with not more than one request per month. Requests for reimbursement received by the COG by the 5th of the month will be paid at the end of that month. Requests received after the 5th of the month will be processed for payment the following month.
- 3.6 If there is a change in scope of work to be performed by the Agency that results in an increase in costs in excess of the maximum amount allowed under section 3.1 herein, the Parties shall enter into an amendment to this Agreement to document the change in scope and to increase the maximum amount reimbursable under this Agreement.
- 3.7 Agency agrees to submit a final invoice to COG within sixty (60) calendar days after Agency has completed the work. At the time of final billing, all necessary adjustments will be made and reflected in the final payment. In the event that such final review or audit reveals overpayment to Agency or under billings to COG, the Agency agrees to refund any overpayment to the COG within thirty (30) calendar days after receipt of an invoice from COG and COG agrees to reimburse the under-billed amount to the Agency within thirty (30) calendar days after Agency's receipt of an invoice.

4. ACKNOWLEDGEMENT OF STATE/FEDERAL FUNDING

In the event funding from the state or federal sources is withdrawn, reduced or limited in any way after the effective date of this contract, and prior to normal completion, the COG may terminate or renegotiate this agreement subject to the new funding limitations and/or conditions.

5. AMENDMENT

This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and understandings, agreements, representations not contained in this Agreement shall not be binding on either Party. Either Party may request changes to the provisions of this Agreement. Such changes that are mutually agreed upon shall be incorporated by written amendment to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

6. TERM / TERMINATION

- 6.1 The term of this Agreement shall begin July 1, 2016, and terminate June 30, 2017, or earlier if agreed to in writing by the Parties, except as set forth below in this section. The term of this Agreement may be modified and continued by amendment for work beyond this date at the discretion of the Parties and as funding allows.
- 6.2 Either Party may terminate this Agreement at any time in the event the other Party fails to perform a material obligation of this Agreement or fails to perform any of the requirements of this Agreement, including, but not limited to, if either Party fails to make reasonable progress on the work or other violation of this Agreement that endangers substantial performance of the work. The Parties shall serve written notice of a Party's intent to terminate this Agreement setting forth in detail the reasons for such termination. The Party receiving such notice of intent to terminate shall be given the opportunity to remedy the default within fifteen (15) calendar days of receipt of such notice. If the default is not cured within the designated time period, this Agreement may be terminated immediately by written notice of the aggrieved Party to the other.
- 6.3 Either Party may terminate this Agreement for convenience and without cause upon two (2) weeks written notice to the other Party. The COG shall pay in full for all services provided up to the date of termination of this Agreement as funding allows.

7. PARTY CONTACTS

All contact between the Parties, including, but not limited to, Agreement administration, will be between the representatives of each Party or their designee as follows:

COG	AGENCY
William A. Fashing, Executive Director bfashing@cwecog.org Financial/Contract Amendments Designee: Anisa Kisamore, Office Administrator akisamore@cwecog.org	Bill Schulte, Chair BOCC@lewiscountywa.gov
Cowlitz-Wahkiakum Council of Governments 207 – 4 th Avenue North/Admin Annex Kelso, WA 98626	Lewis County Board of County Commissioners 351 NW North Street Chehalis, WA 98532
Telephone: (360) 577-3041 Facsimile: (855) 710-6381	Telephone: (360) 740-1120 Facsimile: (360) 740-1475

8. NOTIFICATION

Any notice required pursuant to this Agreement shall be in writing and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the individual(s) identified in Section 7 herein unless otherwise indicated in writing by the Parties to the Agreement.

9. INDEMNIFICATION

9.1 Each Party to this Agreement shall protect, defend, indemnify, and hold harmless the other Party, its officers, employees, and agents, while acting within the scope of their employment as such, from any and all costs (including reasonable attorneys’ fees and costs), claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each of the Party’s own negligent acts or omissions with respect to the provisions of this Agreement. No party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Party’s own negligent acts or omission. Each Party waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the other Party and its agencies, officials, agents or employees.

9.2 The indemnification obligation described in this section shall survive the termination of this Agreement.

10. DISPUTES

The designated representatives herein under Section 7 of this Agreement shall use their best efforts to resolve disputes between the Parties. If these individuals are unable to resolve a dispute, the Parties shall

agree upon a third party to provide non-binding mediation of the issue prior to institution of litigation. Each Party shall bear its own costs and one-half of the cost of the third party mediator.

11. VENUE

This Agreement shall be deemed to be made in the County of Cowlitz, State of Washington, and the legal rights and obligations of the Parties shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the superior court situated in the County of Cowlitz, State of Washington.

12. ATTORNEY FEES and COSTS

In the event a suit, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, and shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law.

13. SEVERABILITY

If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder shall not be affected.

14. ASSIGNMENT

Neither this Agreement nor any interest therein may be assigned by either Party without first obtaining the written consent of the other Party.

15. NONDISCRIMINATION

No person shall, on the grounds of race, creed, color, national origin, age, sex, sexual orientation or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under activities performed pursuant to this Agreement.

16. RECORD RETENTION and AUDIT

During the progress of the work and for a period of not less than six (6) years from the date of final payment to COG, the records and accounts pertaining to the services under this Agreement and accounting thereof shall be kept available for inspection and audit by the Parties, City, State and/or Federal Government, and copies of all records, accounts, documents, or other data pertaining to this Agreement will be furnished upon request. The Parties shall have full access to and right to examine and copy said records during normal business hours and as often as it deems necessary. The Parties agree that the services performed herein are subject to audit by either or both Parties.

17. COPYRIGHTS

Copyright of all material created by COG and paid for with funds as a part of this Agreement shall be deemed the property of the Agency authored by COG. Either Party may use the material and permit others to use such for any purpose consistent with the Party's respective mission. This material includes, but is not limited to, documents, reports, books, videos, pamphlets, sound reproductions, photographs, studies, surveys, tapes, and training material. Materials used to perform the services and create the deliverables of

this Agreement that are not created for or paid for through this Agreement shall be owned by such party as determined by law. The legal owner thereof hereby grants a perpetual, unrestricted, royalty free, non-exclusive license to the other party to use and to permit others to use for any purpose consistent with the respective mission of said material.

18. AUTHORIZED SIGNATURES

The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

19. COUNTERPARTS

This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts shall constitute one agreement.

IN WITNESS HEREOF, the Parties have subscribed their names hereto effective as of the year and date first written above.

**COWLITZ-WAHKIAKUM
COUNCIL OF GOVERNMENTS**

**LEWIS COUNTY
BOARD OF COUNTY COMMISSIONERS**

By: 
William A. Fashing, Executive Director

By: _____
Bill Schulte, Chair

Date: 6-9-16

Date: _____

ATTEST

ATTEST

By: 
Anisa Kisamore, Office Administrator

By: _____
Karri Muir, CMC, Clerk of the Board of
County Commissioners

Date: 060916

Date: _____

APPROVED AS TO FORM

By: _____
Agency Attorney

Date: _____

**SCOPE OF WORK
FOR
LEWIS COUNTY
TRANSPORTATION PLANNING ASSISTANCE**

This Scope of Work described herein are the transportation planning tasks to be performed by Lewis County for the Southwest Washington Regional Transportation Planning Organization (SWRTPO), Fiscal Year 2016 (July 1, 2016 – June 30, 2017 Program year).

WORK TASKS

1. Transportation Program Administration

Program administration is a core function with the purpose of providing the administrative support required to manage and coordinate the overall transportation planning program which includes state and federal planning requirements.

- 1.1 Program Management and Support - Facilitate and support the SWRTPO tasks with Lewis County Transportation Strategy Council and Technical Advisory Committee.
- 1.2 Coordination with Regional, Statewide, and Federal Partners - Attendance at public hearings, meetings, and local council meetings; provide support as needed/requested.
- 1.3 Unified Planning Work Program and Annual Report - Prepare Lewis County's UPWP accomplishments and major work tasks in conjunction with CWCOG; prepare Lewis County elements for inclusion in CWCOG's UPWP Annual Report.

2. Multi-Modal Transportation Planning

The purpose of the tasks within this element is to meet state and federal transportation planning requirements through a continuous, cooperative, and comprehensive planning process. This element also addresses federal, state, and regional priorities, and outlines tasks to develop regional multi-modal transportation long-range strategies for the region. All six of the state's transportation planning priorities of economic vitality, preservation, safety, mobility, environment, and stewardship are included throughout the development of this element and through outcomes associated with this activity.

- 2.1 Coordination of Planning Activities - Work closely with CWCOG staff to provide information required for timely delivery of all planning and reporting deliverables for Lewis County; support SWRTPO in the development of the Regional Transportation Plan.
- 2.2 Planning Consultation, Services, and Technical Support - Continue to research grant funding opportunities and provide staff support in the timely application for all applicable transportation funding opportunities; grant research and grant application assistance to rural cities and towns; continue to work on at-grade railroad crossing planning requirements, and position Washington, the region, and county for potential federal funding and enhanced state freight funding
- 2.3 Review of Comprehensive Plans and Countywide Planning Policies (RCW 365.196.305) - Ensure that transportation facilities and services of statewide significance (RCW 47.06.140) are included in member jurisdictions' GMA plans and the regional transportation plan, as applicable; perform consistency review of Lewis County jurisdictions' transportation elements of their GMA plans when such plans are due to be updated, including reviewing level of service (LOS) methodologies used by local jurisdictions.

2.4 Regional Transportation Plan - Provide for a transportation planning process consistent with the planning factors outlined in MAP-21/FAST Act and CWCOG's work elements and in coordination with the SWRTPO; assist CWCOG staff and member agencies in the development of long-range transportation planning with an emphasis on establishing regional consistency in the development of the project planning process for each agency; assist small cities in delivering transportation projects; coordinate efforts in the development of the RTP and the Transportation Element to the Lewis County Comprehensive Plan.

3. Data Collection, Analysis, and Forecasting

This task includes the development and maintenance of a transportation database to support the transportation planning program. The database will be used to assess transportation system performance and evaluate level of service standards.

3.1 Geographical Information System Resources - Traffic and mapping data management to support both the long-range and short-range planning functions.

ANTICIPATED DELIVERABLE(S)

<u>Activity</u>	<u>Deadlines</u>
Submit to CWCOG monthly activity reports:	Each month prior to the 5th
Create brochures, fact sheets, GIS maps and shapefiles, data related to transportation infrastructure and its needs in Lewis County:	On-going
Submit regionally significant and secured federally funded projects from Lewis County for inclusion in the <i>Regional Transportation Improvement Program (RTIP)</i> :	June 30, 2016
Prepare Lewis County tasks and activities for inclusion in the FY 2016 UPWP Annual Report:	July 15, 2016
Coordinate with CWCOG staff to develop and complete long-range transportation planning strategies to help implement the Regional Transportation Plan:	December 30, 2016
Develop Lewis County element of the FY2018 <i>Unified Planning Work Program (UPWP)</i> in cooperation with CWCOG staff:	April 1, 2017

**COMPENSATION RATES
FOR
LEWIS COUNTY
TRANSPORTATION PLANNING ASSISTANCE**

The following rates are applicable to the 2016-2017 grant fiscal year.

<i>Rate</i>
For the purpose of this agreement, all allowable costs associated with the work program tasks as prescribed in Exhibit A may be submitted for reimbursement up to but not to exceed \$25,000 unless otherwise mutually agreed to and amended to this contract as prescribed in section 5 of the contract.

WSDOT Contract Amendment A
Attached

**AGREEMENT GCB 1764
AMENDMENT #A**

METROPOLITAN/REGIONAL TRANSPORTATION PLANNING ORGANIZATION AGREEMENT

This AMENDMENT A between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT) and the COWLITZ-WAHKIAKUM COUNCIL OF GOVERNMENTS MPO/RTPO, collectively referred to as the "PARTIES" and individually referred to as the "PARTY".

WHEREAS, the PARTIES entered into the original AGREEMENT, GCB 1764, effective December 4, 2013, and

WHEREAS, pursuant to Section 9 Modifications, the PARTIES desire to amend AGREEMENT GCB 1764.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein,

IT IS MUTUALLY AGREED AS FOLLOWS:

The Term of Agreement box shall be amended to read:

Start Date (no change)	End Date	Fiscal Period
December 4, 2013	June 30, 2017	15-17

Section 14, Incorporation of Federal Terms, the second sentence of 14.1 shall be amended to read:

All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference.

Section 18, Civil Rights, 18.3 shall be amended to read:

18.3 Nondiscrimination—Title VI of the Civil Rights Act. The MPO/RTPO agrees to comply, and assures compliance by each third party contractor at any tier, with all requirements, prohibiting discrimination on the basis of race, color, or national origin, Pursuant to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d; and USDOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, and any implementing requirements FTA may issue. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1B, "Title VI and Title VI-Dependent Guidelines for Federal Transit Assistance Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance; and U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 CFR § 50.3, and any other applicable Federal guidance that may be issued.

Section 20, General State and Federal Compliance the first sentence of 20.1 shall be amended to read:

MPO/RTPO agrees to, and shall provide for such methods of administration for the UPWP Project that are found by the U.S. Secretary of Transportation, or the official to whom the Secretary delegates specific authority, to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to the federal acts, regulations, and this assurance in Sections 18 and 19 above. MPO/RTPO agrees to comply with the provisions of 2 CFR 200, "the Common Rule."

All other terms and conditions of the original AGREEMENT shall remain in full force and effect except as modified by this AMENDMENT A.

IN WITNESS WHEREOF, the Parties hereto have executed this AMENDMENT A as of the latest date written below.

COWLITZ-WAHKIAKUM COUNCIL OF
GOVERNMENTS

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

Will A Fishy
By
William A Fishy
Name
Executive Director
Title
6-11-15
Date

Mark Finch
By
MARK FINCH
Name
ASST DIRECTOR MULTIMODAL PLANNING DIVISION
Title
6/24/15
Date



Metropolitan/Regional Transportation Planning Organization Agreement			Term of Agreement		
Agreement No.	CFDA No.	WSDOT Region	Start Date	End Date	Fiscal Period
GCB 1764	20.205&20.505	Southwest	December 4, 2013	June 30, 2015	13-15
Lead Planning Agency			Metropolitan Planning Organization/Regional Transportation Planning Organization		
Cowlitz-Wahkiakum Council of Governments 207 4th Avenue N. Administration Annex Kelso, WA 98626-4195			Cowlitz-Wahkiakum Council of Governments (CWCOG) MPO and Southwest Washington (SWRTPO) RTPO		
			County(ies) included in the MPO/RTPO		
			Cowlitz, Grays Harbor, Lewis, Pacific, Wahkiakum, Rainier		

This Agreement, made and entered into on the start date listed above, regardless of the date of signature execution, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Director, Strategic Planning Division; hereinafter called the "STATE," and the above named Metropolitan Planning Organization/Regional Transportation Planning Organization, hereinafter called the "MPO/RTPO," collectively referred to as "Parties" and individually as "Party," "MPO" and "RPTO."

WHEREAS, the above named county(ies) has(have) created a regional transportation planning organization in accordance with the requirements set forth in RCW 47.80.020; and

WHEREAS, the above named county(ies) includes urban area(s) with a population in excess of fifty thousand individuals, for which a metropolitan planning organization has been designated for each urban area pursuant to Title 23 USC § 134; and

WHEREAS, the STATE has available funds, which have been allocated to it by (a) the United States Department of Transportation, hereinafter called "USDOT," (b) the Federal Highway Administration, hereinafter called "FHWA," (c) the Federal Transit Administration, hereinafter called "FTA," (d) STATE RTPO funds, and/or (e) possibly funds from other Federal or state agencies, which can be used to facilitate urban and regional transportation planning; and

WHEREAS, Federal funding is authorized under 49 USC chapter 53; Title 23 USC (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted as Public Law 109-59, August 10, 2005; as amended by SAFETEA-LU Technical Corrections Act, 2008, Pub. L. 110-244, June 6, 2008; the Transportation Equity Act for the 21st Century (TEA-21) enacted as Public Law 105-178, June 9, 1998, as amended, the National Capital Transportation Act of 1969, D.C. Official Code, §§ 9-1111.01 et seq.; and

WHEREAS, Federal funding is authorized under the Moving Ahead for Progress in the 21st Century Act (MAP-21), Enacted as Public Law 112-141, July 6, 2012; or other Federal laws the Federal Transit Administration (FTA) administers to the extent FTA so determines;

NOW THEREFORE, pursuant to 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and promises contained herein, and /or attached hereto as Exhibits, and by this reference made a part of the Agreement, it is mutually agreed as follows:

1. Work Scope and Budget

1.1 The work scope and budget for the MPO/RTPO planning activities funded by this Agreement shall be documented annually (or biennially with an annual review) in a Unified Planning Work Program hereinafter called "UPWP". The UPWP's are kept on file in the Washington State Department of Transportation Headquarters Transportation Planning Office.

- a. The UPWP Guidelines developed jointly by the State, FHWA, FTA and the MPOs/RTPOs by December 31 each year will serve as a resource for developing the UPWPs. These guidelines identify key emphasis areas for work tasks to accomplish Program purposes.

1.2 The STATE will inform the MPO/RTPO of expected allocations of FHWA Metropolitan Planning funds (PL funds) and FTA Section 5303 funds, STATE RTPO funds and any other STATE administered funds that are available to MPO/RTPOs by December 31 each year for the following State fiscal year, which is defined as July 1st to June 30th for all MPO's except the Lewis-Clark Valley Metropolitan Planning Organization (LCVMPO), which is between October 1st to September 30th. The MPO/RTPO will then prepare a draft UPWP and submit the draft to the STATE by the specific dates listed in the Unified Planning Work Program Guidelines.

The final UPWP shall be adopted by the MPO/RTPO and submitted to the STATE for approval prior to May 31 preceding the start of each subject STATE fiscal year (or biennium). The STATE shall notify the MPO/RTPO, in writing, of its approval of the UPWP for the subject fiscal year by June 30 of each year, unless otherwise noted in the Unified Planning Work Program Guidelines. However, the MPO/RTPO may prepare a two year UPWP if it desires. Written amendments to the two year UPWP will be required in order to authorize expenditure of all federal funding and to comply with federal obligation authority. Changes to the federal surface transportation act may also necessitate amendments to UPWPs signed by the MPO Policy Board and approved by FHWA and FTA.

1.3 The UPWP shall document all transportation and related planning activities for the ensuing state fiscal year, July 1 to June 30, unless otherwise noted in the Unified Planning Work Program Guidelines. As per 23 CFR, Part 450.308(c) each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPO. The UPWP shall identify work proposed for the next one- or two-year period by major activity and task (including but not limited to activities that address the planning factors in Sec. 450.306(a)), in sufficient detail to indicate whether the MPO, State, public transportation operator, local government, consultant or other identified Party will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

The RTPO UPWP should include for each work element a description of the proposed work, an indication of the MPO/RTPO staff anticipated to be performing the work, and a budget which itemizes funding sources by work element and task. Required local matching funds shall be itemized separately. Under no circumstances shall the MPO/RTPO required match amount be less than the required 13.5% match for FHWA PL funds. The match for FTA 49 U.S.C. 5303 funds will be 20%, or as low as 13.5% when consolidated with FHWA 23 U.S.C.134 funds, as determined by FTA, WSDOT, and the MPO/RTPO.

1.4. The MPO/RTPO shall perform the approved work tasks within the approved budget during the subject state fiscal year. The STATE's approval of the UPWP incorporates the adopted UPWP and budget for the subject fiscal year.

1.5 Should the Parties decide it is mutually beneficial for the STATE to perform specific work tasks identified in the UPWP the Parties agree that the STATE may retain actual costs as documented in writing and approved by the MPO/RTPO.

2. Planning Standards and Guidelines

2.1 The MPO/RTPO shall comply with the most current Planning Standards and Guidelines developed by the STATE for the Regional Transportation Planning Program, RCW 47.80, and any amendments made thereto. In addition, the MPO must comply with 23 CFR, Part 450 and 49 CFR, Part 613 "Metropolitan Transportation Planning".

3. Conservation

3.1 The MPO/RTPO shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

4. Payment

4.1 The STATE agrees to reimburse the MPO/RTPOs actual direct and related indirect costs of work approved as part of the UPWP. The maximum amount that the STATE shall reimburse the MPO/RTPO shall not exceed the total amount of approved, appropriated, and authorized FHWA, FTA, and STATE RTPO funds contained in an approved UPWP, less any amounts retained by the STATE to cover costs for all agreed upon work performed by the STATE. All costs must be consistent with the federal cost principles contained in 2 CFR Part 225 or as modified or amended.

4.2 All indirect costs will be based on an indirect cost rate supported either by a STATE accepted indirect cost allocation plan or by an indirect cost plan approved by a cognizant federal agency. Annually, the MPO/RTPO may prepare an indirect cost allocation plan which covers all anticipated indirect costs for the current calendar year, plus any carry-over months from the previous calendar year until a new indirect cost rate has been approved. The STATE will not reimburse any indirect costs not covered by an accepted MPO/RTPO indirect cost allocation plan. A MPO is not required to have an indirect cost rate or plan if they prefer to bill for direct expenses.

4.3 The MPO/RTPO may submit requests to the STATE for reimbursement of funds as they are expended on UPWP activities at any time, but not more frequently than one such request every month. Such requests for reimbursement shall document the amount of funds that have been expended during the period for the total project, as well as for the current billing period. The request for reimbursement shall contain sufficient detail to inform the STATE, FHWA, FTA, and any other entities providing funding for the work as to the progress on each work element contained in the UPWP. The STATE shall review and approve each request for payment in an expeditious manner and shall reimburse MPOs not later than 15 business days after the date of receipt by the STATE of a request for reimbursement of expenditures made by a MPO for carrying out section 134 (23 U.S.C. 104(d)(2)(B)).

5. Reports

5.1 The MPO/RTPO shall communicate with the STATE from time to time, or as often as required by the STATE, during the term of this Agreement to keep the STATE up to date about the progress of the work being performed as described in the UPWP. The STATE reserves the right to request interim written progress reports during the fiscal year, if the MPO/RTPO's monthly billing report is deemed insufficient in detail, the MPO/RTPO undergoes major structural changes, or there are changes to the MPO/RTPO's core organizational functions/activities. The interim reports are due to the STATE within twenty one (21) calendar days of being notified in writing by the STATE. The interim reports shall include a summary of work progress during the course of the fiscal year, costs incurred in accordance with the approved UPWP and budget, and progress to date, including any problems or work delays. The STATE may delay reimbursement of billings if the requested interim reports are not submitted within the twenty one (21) calendar days of being notified in writing by the STATE.

5.2 On or before September 30 of every calendar year, unless otherwise noted in the Unified Planning Work Program Guidelines, after the conclusion of each STATE fiscal year, the MPO/RTPO shall prepare and submit to the STATE a performance and expenditure report. MPOs are required, as a sub-recipient of the STATE to contribute to the annual performance and expenditure report prepared by the STATE and provided to FHWA and FTA pursuant to 23 CFR 420.117(b)(1). This final report shall summarize work accomplished under the UPWP; costs incurred by work element, and identify any carryover of funds. Each annual report must contain at a minimum:

- a. Comparison of actual performance with established goals;
- b. Progress in meeting schedules;
- c. Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;
- d. Cost overruns or underruns;
- e. Approved work program revisions; and
- f. Other pertinent supporting data.

6. Assignment of Work Items

6.1 The work items may be accomplished by joint effort between the staff of the MPO/RTPO, the STATE, and/or local government agencies. Such assignments will be clearly listed in the UPWP and be in compliance with 23 CFR 450.318.

7. Project Records

7.1 MPO/RTPO shall establish and maintain books, records, documents, and other evidence and accounting procedures and practice, sufficient to reflect properly all direct and indirect costs of whatever nature incurred and anticipated to be incurred for the performance of this Agreement. To facilitate the administration of the project, separate accounts shall be established and maintained within MPO/RTPO's existing accounting system or an independent accounting system may be set up. Such accounts are referred to herein collectively as the "Project Account." MPO/RTPO shall charge to a Project Account all eligible costs of the Project. Costs in excess of the latest approved budget, or attributable to actions which have not received the written approval of the STATE, shall not be eligible for reimbursement. All costs, charged to the Project, including any approved services contributed by MPO/RTPO or others, shall be supported by executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges as the State deems appropriate.

8. Audits, Inspection, and Retention of Records

8.1 The STATE, the USDOT, FTA, FHWA, the State Auditor, and the Inspector General and/or any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the MPO/RTPO's records, paper and electronic, with respect to all matters covered by this Agreement. Such entities and their representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make copies of all contracts, invoices, materials, payrolls, and other matters covered by this Agreement. All documents, papers, accounting records, and other material pertaining to costs incurred in connection with the Project shall be retained by the MPO/RTPO for six (6) years from the date of completion of the Project to facilitate any audits or inspections.

8.2 Furthermore, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated before the expiration of the six-year period, the cost records and accounts shall be retained until such litigation, claim, or audit is completed. In accordance with OMB Circular A-133 regulations, the MPO/RTPO is required to arrange for audit of funds expended. All MPO/RTPOs expending Five Hundred Thousand Dollars (\$500,000) or more of federal funds in a year must have an annual audit in accordance with OMB Circular A-133.

9. Modifications

9.1 Either Party may request changes to the provisions of this Agreement and to the UPWP that will be developed. Changes to the work scope and budget changes shall be made by written amendment to the UPWP by the MPO/RTPO and approved in writing by the STATE, FHWA, and FTA. Other changes to this Agreement which are mutually agreed upon shall be incorporated as written amendments to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the Parties hereto.

10. Termination

10.1 This Agreement expires on the date shown in the Term of Agreement heading. If it is determined to be in the best interests of the STATE, the STATE may terminate this Agreement upon giving ten (10) calendar days notice in writing to the MPO/RTPO. If this Agreement is so terminated prior to fulfillment of the terms stated herein, the MPO/RTPO shall be reimbursed only for actual expenses and non-cancelable obligations, both direct and indirect, incurred to the date of termination, as determined by the State. The State will work with the MPO/RTPO to determine what obligations are non-cancelable.

11. Travel

11.1 Current STATE travel rates shall apply to all in-state and out-of-state travel for which reimbursement is claimed during the term of this Agreement. Reimbursement of travel expenses is limited to travel necessary for the completion of the UPWP. All travel by RTPOs using state funds is subject to state travel rules as outlined in the State Administrative & Accounting Manual (SAAM). All travel by MPO/RTPOs using federal funds is subject to federal rules and regulations as outlined in 2 CFR 225. All travel by the MPO/RTPO, using federal funds, must be in compliance with its own internal policies, those of the fiscal agent, or the State's policies, whichever is more restrictive.

12. Subcontracting and Equipment

12.1 The services of the MPO/RTPO shall be directed by a Project Manager. The MPO/RTPO shall not assign, subcontract, or transfer any of the work provided for under this Agreement without prior written approval from the STATE, and the STATE shall review and approve any MPO/RTPO's consultant agreement prior to execution. The MPO/RTPO shall comply with all current federal and state laws and regulations governing the selection and employment of consultants. The STATE reserves the right to appoint a representative to serve on the MPO/RTPO's consultant selection committee. Subcontracts for consultant services must contain all the required provisions to the extent applicable of Sections 3, 5, 8, 9, 13 through 15, and 19 through 22 of this Agreement.

12.2 Any equipment to be purchased under this Agreement shall be listed in the scope of work. All equipment must be purchased, managed, and disposed of in accordance with all current federal and state laws and regulations and the nondiscrimination provisions of Section 18 of this Agreement. The procurement of all equipment must be used for the sole purpose of urban and regional transportation planning activities. Any equipment on hand at the completion of the work shall become the property of the STATE.

13. Purchases

13.1 The MPO/RTPO shall make purchases of any equipment, material, incidental goods or supplies pursuant to this Agreement through procurement procedures approved in advance by the STATE and consistent with the following provisions:

13.2 General Procurement Requirements. The MPO/RTPO shall comply with the procurement procedures identified in FTA circular 4220.1F, "Third Party Contracting Requirements," and any revision or replacement thereof; and applicable Federal regulations or requirements identified in 49 CFR part 18, "Uniform Administrative Requirements," and any amendments thereof, which by this reference are incorporated herein; any reference therein to "grantee" shall mean the MPO/RTPO or consultant.

a. Preference for United States Products and Services. To the extent applicable, the MPO/RTPO agrees to comply with the following requirements:

a.1. Buy America. The MPO/RTPO shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, and any implementing guidance USDOT may issue.

a.2. Cargo Preference - Use of United State Flag Vessels. The MPO/RTPO agrees to comply with U.S. Maritime Administration regulations "Cargo Preference - U.S. Flag Vessels" 49 CFR Part 361 to the extent those regulations apply to the project.

a.3. Fly America: The MPO/RTPO understands and agrees that the Federal Government will not participate in the costs of international air transportation of any person involved in or property acquired for the project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C section 40116, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131. - through 301-10.143.

b. Geographic Restrictions. The MPO/RTPO agrees to refrain from using any State or local geographic preference, except those expressly mandated or encouraged by Federal statute or as permitted by USDOT.

c. Government Orders. In case any lawful government authority shall make any order with respect to the Project or Project equipment, or any part thereof, or the parties hereto or either of them, the MPO/RTPO or consultant shall cooperate with the STATE in carrying out such order and will arrange its operation and business so as to enable the STATE to comply with the terms of the order.

14. Incorporation of Federal Terms

14.1. Purchasing. This Agreement's provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in this Agreement's provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4420.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The MPO/RTPO or consultant shall not perform any act, fail to perform any act, or refuse to comply with any STATE request which would cause the STATE to be in violation of any USDOT term or condition.

14.2. Federal Changes. The MPO/RTPO shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including but not limited to those listed directly or by reference in the Agreement as they may be amended or promulgated from time to time, by FTA, during the term of this Agreement. The MPO/RTPO or consultant's failure to so comply shall constitute a material breach of this Agreement.

15. No Obligation by the Federal Government

15.1. The STATE and the MPO/RTPO acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the MPO/RTPO or consultant or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

15.2. No contract between the MPO/RTPO and its consultant(s) shall create any obligation or liability of the STATE with regard to this Agreement without the STATE's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The MPO/RTPO hereby agrees to include this provision in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this Agreement. The MPO/RTPO agrees to require its consultants to also include this provision in contracts entered into by any consultant, including the consultant's agreements, if any, with subcontractors.

16. Personal Liability of Public Officers

16.1 No officer or employee of the STATE shall be personally liable for any acts or failure to act in connection with the Agreement, it being understood that in such matters they are acting solely as agents of the STATE.

17. Ethics

17.1 Code of Ethics. The MPO/RTPO agrees to maintain a written code or standard of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal assistance. The code or standard shall provide that the MPO/RTPO's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential contractors or subrecipients. The MPO/RTPO may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. The code or standard shall prohibit the MPO/RTPO's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by STATE or local law or regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the MPO/RTPO's officers, employees, board members, or agents, or by subcontractors or sub-recipients or their agents.

17.2. Personal Conflict of Interest. The MPO/RTPOs code or standard shall prohibit the MPO/RTPOs employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm or entity selected for award:

- a. The employee, officer, board member, or agent of the MPO/RTPO;
- b. Any member of the immediate family, including any partner, of the MPO/RTPO;
- c. An organization that employs, or is about to employ, any of the above.

17.3 Organizational Conflict of Interest. The MPO/RTPO code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or impair its objectivity in performing the contract work.

17.4 Debarment and Suspension. The MPO/RTPO agrees to comply with the requirements of Executive Orders Numbers 12549 and 12888, "Debarment and Suspension," 31 U. S.C. § 8101 note, and USDOT regulations on Debarment and Suspension at 48 CFR Part 28, Environmental Protection Agency 40 CFR 32, Federal Emergency Management Agency 44 CFR. 17, and U.S. Department of Health and Human Services 45 CFR 76. MPO/RTPO is prohibited from contracting with or making subawards to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods and services equal to or in excess of \$100,000 and all non-procurement transactions (e.g. awards to subrecipients). MPO/RTPO receiving individual awards for \$100,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. The MPO/RTPO agrees to, and assures that its subrecipients, lessees, third-party contractors, and other participants at any tier of the Project will, search the Excluded Parties Listing System records at www.epsl.gov before entering into any third party sub-agreement, lease, third-party contract, or other arrangement in connection with the Project, and will include a similar term or condition in each of its lower-tier covered transactions.

17.5 Bonus or Commission. The MPO/RTPO affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for Federal financial assistance for this Project.

17.6 Relationship with Employees and Officers of the STATE. The MPO/RTPO shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of the STATE, nor shall the MPO/RTPO rent or purchase any equipment and materials from any employee or officer of the STATE.

17.7 Employment of Former WSDOT Employees. The MPO/RTPO hereby warrants that it shall not engage on a full, part-time, or other basis during the period of the Agreement, any professional or technical personnel who are, or have been, at any time during the period of the Agreement, in the employ of the STATE without written consent of the STATE.

17.8 Restrictions on Lobbying. The MPO/RTPO agrees to:

- a. Refrain from using Federal assistance funds to support lobbying; and
- b. Comply, and assure compliance by each subcontractor at any tier and each sub-recipient at any tier, with applicable requirements of USDOT regulations, "New Restriction on Lobbying," 49 CFR Part 20, modified as necessary by 31 U.S.C. §1352.
- c. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, as specified in 49 CFR Part 20

17.9 Employee Political Activity. To the extent applicable, the MPO/RTPO agrees to comply with the provisions of the "Hatch Act," 5 U.S. C. §§ 1501 through 1508, 7324 -7326, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR Part 151. The "Hatch Act" limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with Federal funds including a loan, grant, or cooperative agreement. Nevertheless, in accordance with 23 U.S.C. § 142(g), the "Hatch Act" does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the "Hatch Act" does not otherwise apply.

17.10 False or Fraudulent Statements or Claims. The MPO/RTPO acknowledges and agrees that the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with this Project. Accordingly, by executing this Agreement the MPO/RTPO certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by this Agreement. In addition to other penalties that WSDOT reserves the right to impose on the MPO/RTPO, the MPO/RTPO also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to WSDOT or the Federal Government, WSDOT and the Federal Government, each, reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the MPO/RTPO to the extent either deems appropriate.

18. Civil Rights

18.1 The MPO/RTPO shall comply with all applicable civil rights statutes and implementing regulations including, but not limited to:

18.2 Nondiscrimination in Federal Transit Programs. The MPO/RTPO agrees to comply, and assures compliance by each third party contractor at any tier, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

18.3 Nondiscrimination—Title VI of the Civil Rights Act. The MPO/RTPO agrees to comply, and assures compliance by each third party contractor at any tier, with all requirements, prohibiting discrimination on the basis of race, color, or national origin, Pursuant to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d; and USDOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, and any implementing requirements FTA may issue. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Assistance Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance; and U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 CFR § 50.3, and any other applicable Federal guidance that may be issued.

18.4 Equal Employment Opportunity. The MPO/RTPO agrees to comply, and assures compliance by each third party contractor at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. These equal employment opportunity (EEO) requirements include, but are not limited to, the following:

- a. The MPO/RTPO agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The MPO/RTPO agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The MPO/RTPO shall also comply with any implementing requirements USDOT may issue.
- b. If the MPO/RTPO is required to submit and obtain Federal Government approval of its Equal Employment Office (EEO) program, that EEO program approved by the Federal Government is incorporated by reference and made part of this Agreement. Failure by the MPO/RTPO or consultant to carry out the terms of that EEO program shall be treated as a violation of this Agreement. Upon notification to the MPO/RTPO or consultant of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal financial assistance, or other measures that may affect the MPO/RTPO's eligibility to obtain future Federal financial assistance for transportation projects.

18.5 Nondiscrimination on the Basis of Sex. The MPO/RTPO agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., with USDOT regulations "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, and with any implementing directives that USDOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

18.6 Nondiscrimination on the Basis of Age. The MPO/RTPO agrees to comply with applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and implementing regulations, which prohibits discrimination on the basis of age.

18.7 Access Requirements for Persons with Disabilities. The MPO/RTPO agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§12101 et seq., which requires the provision of accessible facilities and services; and with the Federal regulations, including any amendments thereto following:

- a. USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- b. USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- c. Joint U.S. Architectural and Transportation Barriers Compliance Board U.S. DOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- d. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 36;
- e. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- f. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- g. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- h. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- i. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
- j. Any other nondiscrimination statute(s) that may apply to the Project.

18.8 Drug or Alcohol Abuse, Confidentiality and Other Civil Rights Protections. The MPO/RTPO agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, as amended 21 USC §§ 1101 et seq.; with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended; 42 USC §§ 4541 et seq.; and comply with the Public Health and Marine Hospital Service Act of 1912 as amended, 42 USC §§ 290dd through 290dd-2, and any amendments to these laws. The CONTRACTOR understands the requirements of confidentiality concerning persons covered and/or receiving services and/or treatment regarding alcohol and drug abuse, as defined in the aforementioned acts as applicable, including any civil and criminal penalties for not complying with the requirements of confidentiality and that failure to comply with such requirements may result in termination of this AGREEMENT.

18.9 Access to Services for Persons with Limited English Proficiency. The MPO/RTPO agrees to comply with applicable Federal guidance issued in compliance with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000.

18.10 Environmental Justice. The CONTRACTOR agrees to comply with the policies of Executive Order No. 12888, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 42 USC § 4321 note; and DOT Order 5810.2, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377 et seq., April 15, 1997, and the most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, except to the extent that the Federal Government determines otherwise in writing.

18.11 Other Nondiscrimination Statutes. The MPO/RTPO agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the Project.

19. Participation of Disadvantaged Business Enterprises

19.1 The MPO/RTPO shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project: The MPO/RTPO or consultant agrees to comply with section 1101(b) of SAFETEA-LU, 23 USC §101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 USC § 101 note, or Section 1101(b) of MAP-21, 23 USC § 101 note, whichever is applicable according to the funding in this Agreement; and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and Federal transit law, specifically 49 USC § 5332.

19.2 The MPO/RTPO or consultant agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the USDOT or in the administration of its DBE program or the requirements of 49 CFR Part 26. The MPO/RTPO agrees to take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the USDOT. The MPO/RTPO DBE program, as required by 49 CFR Part 26 and approved by the USDOT, is incorporated by reference and made part of this Agreement. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this Agreement. Upon notification to the MPO/RTPO of its failure to implement its approved DBE program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq.

20. General State and Federal Compliance

20.1 MPO/RTPO agrees to, and shall provide for such methods of administration for the UPWP Project that are found by the U.S. Secretary of Transportation, or the official to whom the Secretary delegates specific authority, to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to the federal acts, regulations, and this assurance in Sections 18 and 19 above. MPO/RTPO agrees to comply with the provisions of 49 CFR 18, "the Common Rule." MPO/RTPO agrees to comply with the requirements of United States and Washington State law. Any report or procedure developed by the MPO/RTPO pursuant to this Agreement shall become public property and shall not be subject to copyright. MPO/RTPO agrees that the United States, any agency thereof, the U.S. Secretary of Transportation and any of the Secretary's designees, have not only the right to monitor the compliance of MPO/RTPO with the provisions of this assurance, but also have the right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance. It is understood by the MPO/RTPO this assurance obligates MPO/RTPO for the period during which federal assistance is extended to the Project.

21. Legal Relations

21.1 Each Party shall protect and hold harmless the other Party, its officers, officials, employees, and/or agents from and against all claims, suits or actions arising from any intentional or negligent acts or omissions of that Party, its officers, officials, employees, and/or agents while performing under the terms of this Agreement. In the event of a claim for damages of any nature whatsoever arising out of the performance of this Agreement caused by the concurrent actions of the Parties, their officers, officials, employees, and/or agents, each Party shall provide its own defense and be liable for damages (to both persons and/or property), costs, fees, or other amounts only to the extent of its individual actions that are the basis for the imposition of liability or damages.

21.2 Further, the MPO/RTPO specifically assumes potential liability for actions brought by RTPO/MPO's own employees or agents against the STATE and, solely for the purpose of this indemnification and defense, the MPO/RTPO specifically waives any immunity under state industrial insurance laws, Title 51 ROW. The provisions of this section 21 shall survive the termination of this agreement.

22. Interest of Members of or Delegates to Congress

22.1 No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

23. Prohibited Interest

23.1 No member, officer, or employee of MPO/RTPO during his or her tenure in office or employment or one year thereafter shall have any interest, direct, or indirect, in this Agreement or the proceeds thereof.

24. Labor Provisions

24.1. **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

24. 2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (a) of 29 CFR Section 5.8, MPO/RTPO and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic including watchmen and guards, employed in violation of the clause set forth in subparagraph (a) of 29 CFR Section 5.8 in the sum of Ten Dollars (10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (a) of 29 CFR Section 5.8.

24. 3. Withholding for Unpaid Wages and Liquidated Damages. STATE or MPO/RTPO shall, upon its own action or written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any monies payable on account of work performed by MPO/RTPO or subcontractor under any such contract or any contract subject to the contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 CFR Section 5.8.

24. 4. Nonconstruction Grants. MPO/RTPO or subcontractor shall maintain payroll and basic payroll records during the course of work and shall preserve such records for a period of six (6) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by MPO/RTPO or subcontractor for inspection, copying, or transcription by authorized representatives of the STATE and the Department of Labor, and MPO/RTPO or subcontractor and will permit such representative to interview such employees during working hours on the job. If any litigation, claim or audit is commenced, the records and accounts along with supporting documents shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

25. Independent Contractor

25.1 The MPO/RTPO shall be deemed an independent contractor for all purposes and the employees of the MPO/RTPO or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of the STATE.

26. Liability

26.1 No liability shall attach to the STATE by reasons of entering this Agreement except as expressly provided herein.

27. Severability

27.1 If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and this Agreement.

28. Freedom of Information Act

28.1 The MPO/RTPO understands and agrees that the Freedom of Information Act (FOIA), 5 USC § 552, and the Public Records Act, RCW 42.56 apply to the information and documents, both paper and electronic, submitted to the STATE, FTA and U.S. DOT. The MPO/RTPO should therefore be aware that all applications and materials submitted that are related to Project will become agency records and are subject to public release through individual FOIA or state public disclosure requests.

29. Universal Identifier

29.1 The MPO/RTPO shall, in accordance with 2 CFR Part 25, obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number as a universal identifier for Federal financial assistance recipients.

30. Authority to Sign

30.1 The undersigned acknowledges that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date signed last by the Parties below.

METROPOLITAN PLANNING ORGANIZATION/
REGIONAL TRANSPORTATION PLANNING
ORGANIZATION

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

Signed: 

Printed Name: Scott Patterson

Title: Executive Director

Date: 12-26-13

Signed: 

Printed Name: BRIAN J. SMITH

Title: Director, Multimodal Planning Division

Date: 1/28/2014

