

THIS AGREEMENT is made and entered into this 30th day of October, 2003 by and between the DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION the VIRGINIA DEPARTMENT OF TRANSPORTATION and the MARYLAND DEPARTMENT OF TRANSPORTATION all hereafter called "TRANSPORTATION AGENCIES" and the METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, hereafter called "COG".

WITNESSETH:

WHEREAS, the local governments in the Washington metropolitan area and the TRANSPORTATION AGENCIES, pursuant to requirements of 23 U.S.C. Sec. 134, and 49 U.S.C. Sec. 5303, have formally established a continuing, comprehensive and cooperative transportation planning process (hereinafter referred to as the Metropolitan Planning Organization "MPO" planning process) as evidenced by an executed General Memorandum of Agreement, between the TRANSPORTATION AGENCIES and the area Local Governments as meeting the Requirements of the aforementioned Act, and

WHEREAS, the General Memorandum of Agreement has established The National Capital Region Transportation Planning Board ("TPB"), which has been designated the MPO to guide the administration and direction of a transportation planning process for the Washington metropolitan area, and

WHEREAS, the MPO planning process requirements are stated in 23 CFR 450.200, ET. SEQ (Statewide Planning; Metropolitan Planning; Rule) and 23 CFR 420.201 ET. SEQ (State Planning and Research Program Administration; Final Rule), and

WHEREAS, in furtherance of the MPO planning process, the TPB is affiliated with the COG and appointed COG to be its administrative agent for accomplishing the tasks defined annually in its Unified Planning Work Program; and

WHEREAS, the TRANSPORTATION AGENCIES desire to utilize the services of COG on a continuous basis, in connection with the MPO transportation planning process in the Washington metropolitan area.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations herein, the parties hereto do mutually agree as follows:

Section 1. PURPOSE OF THE AGREEMENT

The Purpose of this Agreement is to provide for the administrative support of the MPO transportation planning process (hereinafter referred to as the "Projects") by COG, to provide for financial assistance to COG by the TRANSPORTATION AGENCIES and to state the terms and conditions upon which such assistance will be provided.

Section 2. GENERAL PROVISIONS

This Agreement is subject to all of the most current transportation planning grant agreements between the TRANSPORTATION AGENCIES and the Federal Highway Administration and the Federal Transit Administration and/or their successor federal agencies.

Section 3. THE PROJECTS

(a) The Projects consist of urban transportation planning work as detailed in the annual Unified Planning Work Program (hereinafter referred to as the "UPWP").

The UPWP incorporates in one document all federally assisted state, regional and local transportation activities proposed to be undertaken in the region during the COG fiscal year (the period between July 1 and June 30). The UPWP consists of the approved planning work as well as the approved budgets for such work.

(b) COG shall submit a draft UPWP one hundred and twenty days (120) prior to the start of each Fiscal Year, (July 1 - June 30), for review and approval by the TPB. During the course of each Fiscal Year, COG shall carry out the work program approved by the TPB, the TRANSPORTATION AGENCIES and the FHWA and FTA as part of the annual budget process of the TPB, and subject to the availability of funds.

(c) The UPWP shall consist of the basic work program and service work or special technical studies. The basic work program is defined as those activities contained in the annual UPWP which are supported by funds provided under this Agreement. Notwithstanding the above, contracts entered into based on service work or special technical studies under the UPWP shall be approved in writing only by the TRANSPORTATION AGENCY authorizing and funding the service work or special technical study.

Section 4. PROJECTS BUDGET AND FINANCING

Subject to annual budgetary appropriation, each of the TRANSPORTATION AGENCIES shall transmit to COG, prior to July 1, each year an annual

authorization letter stipulating their share of the annual TPB budget. The cost allocations shall conform to the approved UPWP. Reallocation of grant funds among budget line items, as may be deemed necessary, which do not increase the maximum amount of grant funds authorized, will require prior approval of the TRANSPORTATION AGENCIES, should they exceed a maximum ten percent (10%) overrun on the total funds budgeted for each line item.

Section 5. PROJECTS RESPONSIBILITIES

(a) COG shall be responsible for completing the tasks in the approved UPWP. Such responsibilities shall include, but are not limited to:

(1) Submission to the TRANSPORTATION AGENCIES of monthly UPWP progress reports, which shall include a statement of the work done by all staff and consultants under the Projects. Such reports shall relate directly to the approved Projects Schedule.

(2) Submission to the TRANSPORTATION AGENCIES of other reports relative to the Projects as may be mutually agreed, between the TRANSPORTATION AGENCIES and COG.

(3) Submission to the Transportation Agencies for comment, draft final reports and final reports for the UPWP.

(b) The TRANSPORTATION AGENCIES shall support COG in completing the tasks in the approved UPWP. Such support shall include, but not be limited to:

(1) Technical aid and assistance to COG in the planning and management of the Projects and in assuring compliance with the applicable regulations and guidelines of FHWA, FTA and the TRANSPORTATION AGENCIES.

(2) Making available to COG any non-proprietary research, materials, data, maps, and statistics and other records applicable to the Projects in a timely fashion.

(3) Preparation and submission to the FHWA and FTA of required Projects progress and financial reports.

Section 6. ADMINISTRATION OF THE AGREEMENT

(a) The COG Executive Director, or his/her designee, shall serve as the COG Contracting Officer and is solely authorized to execute this Agreement and any

changes or modifications to this Agreement on behalf of COG. The COG Director of Transportation Planning shall serve as the overall Projects Director with the responsibility for the tasks outlined in Section 5A, hereof.

(b) The TRANSPORTATION AGENCIES shall appoint their own authorized agents to act on their behalf in the administration of the Agreement and shall so notify COG of those respective individuals.

Section 7. PERSONNEL

All of the services required hereunder shall be performed by COG or under its supervision and all personnel engaged in the work shall be fully qualified and authorized under state and local law to perform such services.

Section 8. TIME OF PERFORMANCE

A. The Projects shall be conducted on an annual basis, which shall extend from July 1 through June 30 and shall be renewed annually by an authorization letter from the TRANSPORTATION AGENCIES to COG. The time of performance beyond the fiscal year may be extended by mutual agreement between COG and the TRANSPORTATION AGENCIES subject to prior approval by the FHWA and/or the FTA.

B. This Agreement shall become effective when signed by all parties and shall be reviewed for consistency with all applicable laws and regulations annually but not less frequently than every five (5) years. All terms and conditions of this agreement shall remain in effect while undergoing the periodic review.

Section 9. COMPENSATION AND METHOD OF PAYMENT

Payments shall be made by the TRANSPORTATION AGENCIES to COG on the basis of a monthly invoice for payment that shall be submitted by COG to the TRANSPORTATION AGENCIES. Such payments shall be calculated in accordance with the division of funding set forth in the budgets for the approved UPWP.

(a) Monthly invoices for payment shall include:

(1) The actual expense of the Projects incurred by COG during the period covered by the invoice.

(2) A certification by COG that all costs charged to the Projects, including any approved services contributed by COG or others, are supported by properly executed payrolls, time records, invoices, contracts

and vouchers evidencing, in detail, the nature and propriety of the charges.

(3) A certification by the Projects Director that progress on the Projects by any consultants retained in connection with the Projects through the period covered by the invoice has been carried out satisfactorily and in accordance with the contract between COG and the consultant.

(4) The invoices shall be accompanied by appropriate monthly progress reports in accordance with Section 5 (a) (1) and (2) of this Agreement.

(b) Invoices, as stipulated in 9(a), shall be submitted no more than thirty (30) days after the end of the month and shall be honored and paid to COG by the TRANSPORTATION AGENCIES within thirty (30) days of their receipt. The final invoice shall be submitted within sixty (60) days after the end of the fiscal year.

#### Section 10. ACCOUNTING

COG shall establish and maintain a set of accounts within the framework of an established accounting system for the Projects in a manner consistent with 49 CFR Section 18.20. All costs attributable to the Projects shall be charged in accordance with procedures and standards established in OMB circular A-87, Revised "Cost Principles for State and Local Governments".

#### Section 11. AUDIT AND INSPECTION OF RECORDS

(a) COG shall comply with the OMB single audit requirements as specified in OMB Circular A-133.

(b) COG shall permit the authorized representatives of the TRANSPORTATION AGENCIES, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of COG relating to its performance under this Agreement.

(c) COG agrees that following the completion of any audit report prepared in accordance with this Section, it shall promptly refund to the TRANSPORTATION AGENCIES any payments that are found to be unsupported by acceptable records.

(d) Prior to the closeout of the Projects, COG shall, if requested, furnish audit reports of all expenditures under any subcontract with a consultant. Such reports shall be prepared according to generally accepted accounting principles.

(e) COG shall maintain and retain all records and documents relating to the Projects for five (5) years following the completion of the Projects for contracts not under litigation and for the duration of litigation for contracts under litigation.

Section 12. PROFESSIONAL SERVICES

COG assures that required federal procurement practices are followed for all contracts.

(a) Basic Work Program The UPWP shall include a brief statement of work to be performed by consultants and identify total funds needed with a breakdown by fiscal year. Prior to Request for Proposals being issued by COG, all statements of work shall be approved by the TPB or its appointed committee or subcommittee. COG shall provide an executed copy of the contracts, as requested, to the TRANSPORTATION AGENCIES.

(b) Services or Special Projects Contracts entered into based on service work or special technical studies shall be approved in writing by the TRANSPORTATION AGENCY authorizing and funding the service work or special technical study.

Section 13. TERMINATION OF AGREEMENT FOR CAUSE

If, through any cause, COG shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if COG shall violate any of the covenants, agreements or stipulations of this Agreement, the TRANSPORTATION AGENCIES shall thereupon have the right to terminate this Agreement by giving written notice to COG of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event of termination of this Agreement, COG shall be entitled to receive from the TRANSPORTATION AGENCIES, a proportionate share of the just and equitable compensation of any work completed to the date of termination. Should COG make a positive effort to cure the deficiency within ten (10) days of the receipt notice of termination by the TRANSPORTATION AGENCIES, the TRANSPORTATION AGENCIES may extend the 30 day period.

Section 14. TERMINATION FOR CONVENIENCE

COG or the TRANSPORTATION AGENCIES may terminate this Agreement at any time, without cause, provided it gives sixty (60) days written notice to the other party of such termination, which shall be effective on the date of such notice and provided that it has satisfied the financial or other obligations it has incurred under the Agreement up to, but not including the effective date of termination.

Section 15. DISPOSITION OF DOCUMENTS AND DATA

All finished or unfinished documents, data, surveys, drawings, maps, models, photographs and reports prepared by or for COG for the TRANSPORTATION AGENCIES in accordance with this Agreement shall become the joint property of all the parties to this Agreement.

Section 16. SMALL, DISADVANTAGED AND WOMEN OWNED BUSINESS ENTERPRISE

COG shall comply with the policy of the U.S. Department of Transportation on Disadvantaged Business Enterprises (DBE) as set forth in 49 CFR Part 26, as amended.

COG shall ensure that DBE's, as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this Agreement. In this regard COG shall take all necessary and reasonable steps in accordance with 49CFR 26, as amended, to ensure that DBE's have the maximum opportunity to compete for and perform contracts. COG shall not discriminate on the basis of race, color, national origin, disability, or sex in the award and performance of DOT assisted contracts.

Section 17. NONDISCRIMINATION

The parties hereby agree that as a condition to receiving any federal assistance from the TRANSPORTATION AGENCIES, COG shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulation) and other pertinent

directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under any program or activity.

COG shall permit access to its books, records and account by the TRANSPORTATION AGENCIES for purposes of investigation to ascertain compliance with these provisions.

Section 18. DEBARMENT AND SUSPENSION

COG shall obtain from its third party contractors, subgrantees and subrecipients certifications required by US DOT regulations, "Government-wide Debarment and Suspension (Nonprocurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations.

Section 19. INTEREST OF MEMBERS OF CONGRESS

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

Section 20. INTEREST OF MEMBERS OF COG AND OTHERS:

No officer, member or employee of COG, and no other public official of the governing body of the locality or the locations in which the Projects are situated or being carried out who exercises any functions or responsibilities in review or approval of the undertaking or carrying out of these Projects during his/her tenure or one year thereafter, shall have any personal interest, direct or indirect, apart from his/her official duties in this Agreement or the proceeds thereof.

Section 21. INTEREST OF TRANSPORTATION AGENCIES

The TRANSPORTATION AGENCIES covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The TRANSPORTATION AGENCIES further covenant that in the performance of this Agreement, no person having such interest shall be employed.



Section 22. ASSIGNMENT

COG shall not assign its interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the TRANSPORTATION AGENCIES hereto.

Section 23. COVENANT AGAINST CONTINGENT FEES:

COG warrants that it has not employed any persons to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the TRANSPORTATION AGENCIES the right to terminate this agreement.

Section 24. CHANGES

The parties hereto may, from time to time, request changes in the work and services to be performed by COG. Such changes, including any increase or decrease in the cost of performing the work and services, must be mutually agreed upon in writing and signed by the TRANSPORTATION AGENCIES and COG, and concurred with by FTA and FHWA, where required, before they are considered changes to the Agreement.

Section 25. PUBLICATION, REPRODUCTION AND USE OF MATERIALS

The TRANSPORTATION AGENCIES, the U.S. DOT, and COG shall reserve a royalty-free nonexclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for government purposes:

- ▶ the copyright in any work developed under a grant, subgrant or contract under a grant; and
- ▶ any rights of copyright to which a grantee, subgrantee, or contractor purchases ownership with grant support.

All reports published by COG or subrecipient under this Agreement shall contain the following acknowledgment: "The preparation of this report was financially aided through grants from the District of Columbia Department of Transportation; Maryland Department of Transportation; Virginia Department of Transportation; the Virginia Department of Rail and Public Transportation; U.S. Department of Transportation, Federal Highway Administration; and the U.S. Department of Transportation, Federal Transit Administration."

Section 26. DISPUTES

(a) Basic Work Program. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by mutual consent of all parties, shall be decided through unanimous decision of the TRANSPORTATION AGENCIES, which shall notify COG in writing of their joint determination. Prior to making any such decisions, COG shall be given an opportunity to provide, and the TRANSPORTATION AGENCIES shall consider, information in support of its position. The decision of the TRANSPORTATION AGENCIES shall be final and conclusive on such fact(s) in dispute. Judicial Review of the record of such determinations is available by a court of competent jurisdiction to determine if such determinations have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or are not supported by substantial evidence.

(b) Services or Special Projects. Any dispute concerning a question of fact in conjunction with Services or Special Projects, requested, authorized and funded by one TRANSPORTATION AGENCY, which is not disposed of by mutual consent of the TRANSPORTATION AGENCY and COG shall be decided by such TRANSPORTATION AGENCY, which shall notify COG in writing of its determination. Dispute resolution by such TRANSPORTATION AGENCY shall be conducted as detailed in section 26a above.

Section 27. REQUIRED AND STANDARD CLAUSES

A. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any Party to expend funds in excess of available appropriations.

B. NON-DISCRIMINATION: The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, age, disability, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; U.S.C. '2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, age, disability, or national origin.

C. ANTI-DEFICIENCY ACT: Pursuant to the Anti-Deficiency Act, 31 U.S.C. '134(a)(1)(1994) nothing contained in this Agreement shall be construed as binding on the United States or the TRANSPORTATION AGENCIES to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States or the

TRANSPORTATION AGENCIES in any contract or other obligation for the further expenditure of money in excess of such appropriations.

D. LOBBY PROHIBITION: The Parties will abide by the provisions of Section 1913 (Lobbying with Appropriated Monies) of 18 U.S.C., which states:

No part of the money appropriated by enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other devise, intended to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Members of Congress, through the proper channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.

E. This Agreement is subject to all laws governing Federal procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed in any way impairing the general powers of the Parties for supervision, regulation and control of its property under such applicable laws, regulations and rules.

Section 28. EXECUTION OF AGREEMENT

Several copies of this Agreement may be simultaneously executed, each of which shall be deemed to be an original having identical legal effect. Each party to this Agreement shall receive an original Agreement.

IN WITNESS WHEREOF, the TRANSPORTATION AGENCIES have caused this Agreement to be duly executed in their behalf and under their several seals to be hereunto affixed and attested; and, thereafter, COG has caused the same to be duly executed in its behalf, the date of which all parties have signed this Agreement.

WITNESS

METROPOLITAN WASHINGTON  
COUNCIL OF GOVERNMENTS

By: 


By:   
Executive Director

9/5/07  
Date

Witness:

DISTRICT OF COLUMBIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

By:  \_\_\_\_\_  
Director

9/15/03  
Date

WITNESS

STATE OF MARYLAND  
DEPARTMENT OF TRANSPORTATION

By: 

By:   
Secretary

10/30/2003  
Date

WITNESS:

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION

By: Carl Amato

By: Whitson W. Stewart  
Secretary

9-16-03  
Date