

CFDA No. 20.205  
Highway Planning & Construction

AGREEMENT BETWEEN  
SOUTH CAROLINA  
DEPARTMENT OF TRANSPORTATION  
AND

SUMTER AREA TRANSPORTATION STUDY METROPOLITAN PLANNING ORGANIZATION  
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This Agreement, made this 11<sup>th</sup> day, of June, 2013, by and between the South Carolina Department of Transportation, hereinafter referred to as SCDOT and the Sumter Area Transportation Study Metropolitan Planning Organization, hereinafter referred to as the MPO.

Witnesseth that:

WHEREAS, 23 USC 134 and 49 USC Section 5303(c) require that Metropolitan Planning Organizations, in cooperation with SCDOT and transit agencies, develop transportation plans and programs for metropolitan planning areas of the State; and

WHEREAS, 23 USC 104(f), authorizes Metropolitan Planning (PL) Funds and 49 USC Section 5305(d) authorizes funds to be made available to the MPOs designated by the Governor to support the urban transportation planning process; and,

WHEREAS, the MPO and SCDOT jointly promote an ongoing continuing, cooperative, and comprehensive multimodal transportation planning process that fully considers the planning factors required by applicable laws and regulations.

WHEREAS, the federal share payable for authorized activities using 49 USC Section 5303 and metropolitan planning (PL) funds is 80% of allowable costs; and

WHEREAS, carrying out the provisions of Section 134 of Title 23 USC is the joint responsibility of the MPO and SCDOT; and,

WHEREAS, metropolitan planning (PL) funds, and other federal transportation funds that may be used for planning and 49 USC Section 5305(d) funds are to be used in conjunction with work conducted under the terms of this Agreement; and,

WHEREAS, the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) offer States the option of participating in the Consolidated Planning Grant (CPG) program; and,

WHEREAS, the CPG program allows the states and MPOs to merge FTA metropolitan or statewide planning funds with FHWA PL funds to provide states support for both highway and transit planning activities in single consolidated grants; and,

WHEREAS, states/MPOs have the option to transfer planning funds to either the FTA or the FHWA, to be awarded and administered for metropolitan or statewide planning purposes; and,

WHEREAS, beginning with State Fiscal Year beginning July 1, 2013, SCDOT transfers 49 USC Section 5305(d) funds to the FHWA on an annual basis as PL funding to be used to support metropolitan planning; and

WHEREAS, the Governor of the State of South Carolina has designated the MPO for the above mentioned urbanized area; and

WHEREAS, SCDOT, as delegated by the Governor of the State of South Carolina, has executed an agreement with the MPO pursuant to the MPO designation; and

WHEREAS, an area equal to or larger than the above-mentioned urbanized area has been delineated in accordance with federal and state guidelines where required metropolitan transportation planning activities may take place; and

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, SCDOT and the MPO do agree to as follows:

Article 1. Term of Agreement

This Agreement becomes effective on or before July 1, 2013, or when signed by all parties hereto, whichever is later. SCDOT shall not continue its obligation to the MPO under this Agreement if the Governor's designation of the MPO is withdrawn, if federal funds cease to become available, or if the Agreement is terminated as hereinafter provided. The term of this Agreement is consistent with the term of MAP-21 extending until September 30, 2014, or prolonged to coincide with future appropriation extensions, and can be updated as necessary.

Article 2. Responsibilities of the MPO and SCDOT

A. LONG RANGE TRANSPORTATION PLAN

The MPO will review, update, and approve the Long Range Transportation Plan (LRTP) at least every five years or as required by 23 CFR 450.322. The MPO will develop the LRTP in

consultation with federal and state officials. For the purpose of the developing the LRTP, the MPO, SCDOT, and the operators of publicly owned transit services shall cooperatively develop estimates of funds that will be available to support LRTP implementation. SCDOT will provide the MPO with performance measures and State defined targets to be incorporated into the MPO LRTP.

SCDOT will review and provide written comments, addressing fiscal constraint and reasonable availability of funds, project(s) purpose and need, and project logical termini on the draft LRTP in time for the comments to be evaluated and acted upon prior to the draft LRTPs being released to the public for comment.

The MPO and SCDOT shall cooperatively develop all federal and state funded transportation projects for inclusion in the MPO's LRTP. The MPO will also include any locally funded projects of regional significance.

The MPO will develop the process for project prioritization and selection, considering the requirements of Section 57 of the SC Code of Laws Act 114, for the LRTP. SCDOT will participate in the development, review and approval of the project prioritization and selection process. The MPO will approve projects to be included in its LRTP. When amending a LRTP, the MPO will ensure fiscal constraint is maintained and the project has received an ACT 114 prioritization if the project is utilizing SCDOT funds. SCDOT will review and comment on LRTP amendments for fiscal constraint, purpose and need, and logical termini, and prioritization. The parties will report events that may significantly impact long range transportation plans as soon as they become known. These events or conditions shall be considered if they materially affect the revenue, schedule or scope of project(s) identified in the LRTP.

The MPO will develop, publish, and use a Public Participation Plan that defines a process for providing citizens, affected agencies, and consultation parties reasonable opportunities to be involved with the metropolitan transportation planning process. This document shall address public involvement procedures for the development, update, and modifications to the LRTP.

## B. TRANSPORTATION IMPROVEMENT PROGRAMS

The MPO will review, update, and approve the Transportation Improvement Program (TIP) at least every four years as required by 23 CFR 450.324. For the purpose of developing the TIP, the MPO, SCDOT, and operators of publicly owned transit services will cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

The MPO will develop and approve its TIP as appropriate in coordination with the Statewide Transportation Improvement Program (STIP) and LRTP. The MPO will ensure its TIP is fiscally constrained and that projects in it are consistent with the LRTP. The MPO will develop the TIP financial plan in cooperation with SCDOT, consistent with the approved resource allocation for federal aid projects.

The MPO, in cooperation with SCDOT, shall establish the TIP development schedule. SCDOT will participate in the development of the TIP and will provide project schedule and cost estimates. SCDOT will review and provide comments, on the draft TIP in time for the comments to be evaluated and acted upon prior to the draft TIP being released to the public for comment. After the TIP is approved by the MPO and transmitted to SCDOT, the TIP will be included into the STIP without modification. SCDOT will submit their STIP to the FHWA and the FTA for approval.

The MPO and SCDOT shall cooperatively develop all federal and state funded transportation projects in the MPO study area for inclusion in MPO's TIP. The MPO will confirm each project is eligible for federal aid funding and will follow their approved Act 114 ranking process for project prioritization and selection prior to programming each project in the TIP. SCDOT will participate in the development, review and approval of the project federal-aid eligibility, prioritization and selection process.

When amending a TIP, the MPO will ensure consistency with the current long range transportation plan, fiscal constraint, and Act 114 requirements. SCDOT will review and comment on draft TIP amendments for consistency with the STIP and fiscal constraint. The MPO will provide required routing to SCDOT to coordinate the inclusion of TIP changes in the STIP. Project information pertaining to SCDOT administered programs will be routed to the MPO for inclusion in the TIP. The STIP will not be modified to reflect State program or other MPO changes without MPO confirmation that the TIP has been updated. The MPO will document a revision process within the TIP document that discusses thresholds for amendments and corrections. The MPO will maintain an up-to-date TIP available for public review on the worldwide web.

The MPO will develop, publish, and use a Public Participation Plan that defines a process for providing citizens, affected agencies, and consultation parties reasonable opportunities to be involved with the metropolitan transportation planning process. This document shall address public involvement procedures for the development and modifications of the TIP.

### C. ANNUAL LISTING OF OBLIGATED PROJECTS

In cooperation with SCDOT and operators of publicly operated transit services, the MPO will develop an annual listing of obligated projects that utilized FHWA or FTA funds from the preceding program year. The listing shall be consistent with information contained in the TIP. SCDOT will provide financial information for the annual list each November and the MPO will publish the list by the end of each January.

### D. UNIFIED PLANNING WORK PROGRAM

Each year the MPO shall submit to SCDOT a program of work that includes goals, objectives and/or tasks required by each of the several agencies involved in the metropolitan transportation planning process. This program of work is to be called the Unified Planning Work Program (UPWP), or any successor name. Each year's approved UPWP shall be incorporated into this Agreement by reference. The UPWP shall be approved by the MPO Policy Committee, in accordance with 23 CFR 450.314(a)(1).

The UPWP will be prepared for a period of one year unless otherwise agreed to by SCDOT, the MPO, and the MPO Transportation Policy Committee. The UPWP shall reflect only that work can be accomplished during the time period of the UPWP including all planning projects regardless of funding type, in accordance with 23 CFR 420.113 (a) (5) and 23 CFR 420.115(a).

The budget and statement of work will be included in the UPWP. The maximum amount payable will not exceed the budget included in the UPWP.

The UPWP will include a planning certification statement to be signed by the MPO Policy Committee Chairperson and SCDOT Deputy Secretary of Engineering once every four years or as required by federal law.

The effective date of each UPWP shall follow the state fiscal year beginning July 1 of each year and ending on June 30. On that date, the UPWP shall constitute a new federal project and shall supersede the previous UPWP.

The UPWP shall comply with all applicable federal and state requirements and will describe metropolitan transportation and transportation related planning activities anticipated in the area.

The UPWP shall reflect transportation planning work to be funded by federal, state or local transportation, or transportation related (e.g., air quality) planning funds.

The use of federal metropolitan transportation planning funds shall be limited to transportation planning activities affecting the transportation system within the Metropolitan Study Area Boundary (MSAB). If an MPO determines that data collection and analysis activities relating to land use, demographics, or traffic or travel information, conducted outside the MSAB, affect the transportation system within the MSAB, then those activities may be undertaken using federal planning funds, provided that the activities are specifically identified in an approved UPWP. Any other costs incurred for transportation planning activities outside the MSAB will not be eligible for reimbursement.

The cost of travel incurred by elected officials will not be eligible for reimbursement with federal transportation planning funds.

The use of federal transportation planning funds shall be limited to corridor/subarea level planning or multimodal or system wide transportation planning studies.

SCDOT will provide an announcement of PL funding, consistent with jointly developed distribution formula, annually in February. MPO will provide a draft UPWP to SCDOT and FHWA/FTA by the end of March. Failure to adhere to the time line may result in a delay in the authorization to the MPO to proceed with incurring costs.

The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments prior to receiving written approval from SCDOT. Any costs incurred prior to receiving approval shall not be eligible for reimbursement from federal transportation planning funds.

The MPO Policy Committee shall not delegate approval authority of the UPWP or subsequent amendments, except for corrective actions. Corrective actions do not change the scope of work, result in an increase or decrease in the amount of task funding or affect the overall budget, examples include typographical, grammatical or syntax corrections.

1. Should any conflict be discovered between the terms of this Agreement and the UPWP, the terms of this Agreement shall prevail.
2. The MPO is not authorized to request payment for any work it may perform that is not included in the current UPWP.

#### E. TRAVEL DEMAND MODELING AND COORDINATION ON STATE PLANNING

The MPO is responsible for maintaining and updating the regional transportation model for all roadways of significance within the MPO study area. SCDOT will provide traffic count information in the form of annual average daily traffic (AADT) for all state highways, as

available, within the MPO study area. The regional transportation model shall be updated every five years or in conjunction with the updated LRTP. The states shall review the MPO's model as it is being developed or updated to ensure model performance and consistency is achieved. The MPO and SCDOT shall work cooperatively in the development and application of the regional transportation model. The MPO shall provide SCDOT up-to-date files necessary to operate the regional travel demand model. Any analysis performed by SCDOT using the regional travel demand model will be shared with the MPO.

As appropriate, the MPO will participate in SCDOT's transportation planning efforts within the MPO region. Additional transportation planning processes include but are not limited to:

- All elements of the Statewide Multimodal Transportation Plan;
- Corridor Studies; and
- Advanced Project Planning Reports (APPRs).

Article 3. Responsibilities of the MPO Policy Committee and Technical Advisory Committee

The MPO Policy Committee is the policy body that is the forum established under 23 USC §134 with the responsibility for establishing overall transportation policy for the MPO and for making required approvals. The MPO Policy Committee is comprised of those governmental agencies identified in the original designation agreement and those agencies or organizations subsequently added to the membership of the committee.

The responsibilities of the **MPO Policy Committee** are as follows:

1. Ensure that requirements of 23 USC §§134 and 135 and 49 USC, Chapter 53, and other applicable laws and regulations are carried out.
2. Use funds provided in accordance with this Agreement to develop and maintain a comprehensive regional transportation planning program in accordance with requirements of 23 USC §134(f) and 49 USC §5303.

The responsibilities of the **MPO Technical Advisory Committee** are as follows:

Provide technical advice and recommend appropriate course of action to the MPO Policy Committee on current and emerging transportation issues, goals, plans and programs affecting the MPO. The advice and recommendations of this body are

required at minimum on updates and modifications to the long-range transportation plan, TIP, and conformity findings as required.

Article 4. Responsibilities of the Fiscal Agent (The fiscal Agent and the MPO may be the same entity. As used in this Agreement all references to the MPO's responsibilities shall apply equally to the MPO's fiscal agent.)

The Fiscal Agent for the MPO is the entity responsible for providing fiscal, human resource and staff services to the MPO.

The responsibilities of the fiscal agent of the MPO are as follows:

1. Maintain required accounting records for state and federal funds consistent with current federal and state requirements.
2. Provide all appropriate funding, including required non-federal matching funds, as identified by fiscal year in the UPWP, to allow the MPO staff to effectively and efficiently operate the program.
3. Provide human resource services to the MPO.
4. Provide benefits for the MPO staff that shall be the same as the fiscal agent normally provides its own employees or as determined through an agreement between the MPO Policy Committee and the fiscal agent. Costs incurred by the fiscal agent for these benefits may be reimbursed by the MPO.
5. May establish procedures and policies for procurement and purchasing in cooperation with the MPO Policy Committee, subject to compliance with Procurement statutes of the State of South Carolina.

Article 5. Reimbursement of Costs

SCDOT agrees to reimburse the MPO for the federal share of all eligible and approved costs upon satisfactory performance of the work. "Eligible costs" shall be as defined by 23 CFR 420.113. SCDOT's reimbursement of any cost incurred hereunder is further contingent upon the following:

1. Sufficient federal funds are available to SCDOT for making payments hereunder.
2. The incurred cost is authorized in the UPWP. The maximum amount payable under this Agreement shall not exceed the total budgeted amount outlined in the UPWP.
3. The cost has actually been incurred by the MPO and meets the following criteria:
  - a. is verifiable from MPO records;

- b. is not included as a match funds for any other federally assisted program;
  - c. is necessary and reasonable for the proper and efficient accomplishment of program objectives;
  - d. is the type of charge that would be allowable under OMB Circular A-87 Revised, "Cost Principles for State, Local and Indian Tribal Governments"; and
  - e. is not paid by SCDOT or federal government under another assistance program unless authorized to be used as match under the other federal or state agreement and the laws and regulations to which it is subject.
4. At the beginning of each fiscal year, SCDOT will request authorization of PL funds as described in the UPWP. If the UPWP is subsequently revised necessitating a revision to the original authorization, the MPO will provide a written request to SCDOT to modify the original authorization.
5. The MPO will submit requests for payment of authorized costs incurred on a quarterly basis. Each request for payment will be submitted in a manner acceptable to SCDOT which includes at a minimum the following information:
  - a. UPWP budget category or line item;
  - b. description of the cost;
  - c. quantity;
  - d. price;
  - e. extension; and
  - f. total.
6. The final bill from the previous fiscal year shall be submitted to SCDOT no later than August 30. Any bills submitted after August 30 will be processed against the current year's UPWP.
7. Noncompliance with the terms of Article 3 may result in cancellation of work authorization and/or suspension of payments after a 30-day notification by SCDOT to a MPO's Policy Committee.

#### Article 6. Reporting

To permit program monitoring and reporting, the MPOs shall prepare and submit quarterly performance and expenditure report of progress to SCDOT no later than 15 days following the end of each quarter (September 30, December 31, and March 31). In addition, an annual performance and expenditure report will be submitted no later than 30 days following the

end of the state fiscal year (June 30<sup>th</sup>) that covers activities during the final quarter and summarizes the accomplishments for the year. The quarterly and annual reports should include an estimate for percentage of work completed by task for each reporting period.

Article 7. Indemnification

To the extent possible under state law, the MPO shall save harmless SCDOT from all claims and liability due to the acts or omissions of the MPO, its agents or employees. To the extent possible under state law, the MPO also agrees to save harmless SCDOT from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by SCDOT in litigation or otherwise resisting such claims or liabilities as a result of any activities of the MPO, its agent or employees.

Further, to the extent possible under state law, the MPO agrees to protect, indemnify, and save harmless SCDOT from and against all claims, demands and causes of action of every kind brought by any employee of the MPO against SCDOT due to personal injuries and/or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the MPO or SCDOT.

Article 8. Inspection of Work and Retention of Documents

SCDOT and the U.S. Department of Transportation, and any authorized representative thereof, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the MPO or a subcontractor, the MPO shall provide or require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

The MPO agrees to maintain all books, documents, papers, computer generated files, accounting records and other evidence pertaining to costs incurred and work performed hereunder, and shall make such materials available at its office during the time period covered and for four years from the date of the final payment under the UPWP. Such materials shall be made available during the specified period for inspection by SCDOT, the U.S. Department of Transportation and the Office of the Inspector General of the U.S. Department of Transportation

and any of their authorized representatives for the purpose of making audits, examinations, excerpts and transcriptions.

The state auditor may conduct an audit of any entity receiving funds from SCDOT directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit in connection with those funds.

Article 9. Work Performance

All work performed hereunder shall be carried out in a professional and orderly manner, and the products authorized in the UPWP shall be accurate and exhibit high standards of workmanship.

Article 10. Disputes

A. The MPO shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the work of this Agreement.

B. In the event of a dispute between SCDOT and the MPO concerning the work performed hereunder, the decision of SCDOT's Deputy Secretary for Engineering shall be final and conclusive for the parties hereto. Policy issues not settled with SCDOT will be taken to the FHWA/FTA level for resolution.

Article 11. Non-Collusion

The MPO shall warrant that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the MPO breaches or violates this warranty, SCDOT shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

Article 12. Third Party Participants

Any subcontract for services rendered by individuals or organizations not a part of the MPO's organization shall not be executed without prior authorization and approval of the subcontract by SCDOT and the U.S. Department of Transportation. If the work for the Third Party Participant is authorized in the current approved UPWP, and if the MPO's procurement process for the negotiated contract has been reviewed and approved by SCDOT, the subcontract shall be deemed to be authorized and approved, provided that the subcontract includes all provisions required by SCDOT and the U.S. Department of Transportation. No subcontract will relieve the MPO of its responsibility under this Agreement.

Article 13. Termination

SCDOT may terminate this Agreement at any time before the date of completion if the Governor withdraws his designation of the MPO. SCDOT or the MPO may seek termination of this Agreement if either party fails to comply with the conditions of the Agreement. SCDOT or the MPO shall give written notice to all parties at least 90 days prior to the effective date of termination and specify the effective date of termination.

SCDOT may terminate this Agreement for reasons of its own, subject to agreement by the MPO and the Policy Committee.

If both parties to this Agreement agree that the continuation of the Agreement would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions.

Upon termination of this Agreement, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the MPO shall, at the option of SCDOT, be delivered to SCDOT.

SCDOT shall reimburse the MPO for those eligible expenses incurred during the Agreement period which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to SCDOT. The MPO shall not incur new obligations for the terminated portion after the effective date of termination.

Article 14. Force Majeure

Except with respect to defaults of subcontractors, the MPO shall not be in default by reason of failure in performance of this Agreement in accordance with its terms (including any failure by the MPO to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the MPO. Such causes may include but are not limited to acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the MPO.

Article 15. Remedies

Violation or breach of Agreement terms by the MPO, or its fiscal agent, shall be grounds for termination of the Agreement. Any costs incurred by SCDOT arising from the termination of this Agreement shall be paid by the MPO, or its fiscal agent.

This Agreement shall not be considered as specifying the exclusive remedy for any dispute, but all remedies existing at law and in equity shall be available to either party and shall be cumulative.

Article 16. Gratuities

Employees of SCDOT or the MPO shall not accept any benefits, gifts or favors from any, person doing business with, or who may do business with, SCDOT or the MPO under this Agreement.

Any person doing business with, or who may do business with SCDOT or the MPO under this Agreement may not make any offer of benefits, gifts or favors to SCDOT or the MPO employees. Failure on the part of SCDOT or the MPO to adhere to this policy may result in termination of this Agreement.

Article 17. Compliance with Laws

The parties to this Agreement shall comply with all federal and state laws, statutes, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and

licensing laws and regulations. When required, the MPO shall furnish SCDOT with satisfactory proof of its compliance therewith.

**Article 18. Debarment/Suspension**

The MPO is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.

The MPO shall require any party to a subcontract or purchase order awarded under this Agreement as specified in Title 49 of the Code of Federal Regulations, Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by SCDOT, to furnish a copy of the certification.

**Article 19. Equal Employment Opportunity**

The parties to this Agreement agree to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

**Article 20. Nondiscrimination**

During the performance of this Agreement, the MPO, their assigns and successors in interest, agree to the following:

1. **Compliance with Regulations:** The MPO shall comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The MPO, with regard to the work performed during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MPO shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 49 CFR

and Part 710.405(b) or the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the MPO for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the MPO (policy committee or fiscal agent) of the MPO's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age or disability.
4. **Information and Reports:** The MPO shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by SCDOT or the U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the MPO (policy committee or fiscal agent) is in the exclusive possession of another who fails or refuses to furnish this information, the MPO (policy committee or fiscal agent) shall so certify to SCDOT or the U.S. Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the MPO's noncompliance with the nondiscrimination provisions of this Agreement, SCDOT shall impose such Agreement sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the MPO (policy committee or fiscal agent) under the Agreement until the MPO complies, and/or
  - Cancellation, termination, or suspension of the Agreement in whole or in part.
6. **Incorporation of Provisions:** The MPO shall include the provisions of paragraphs 1 through 6 in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The MPO shall take such action with respect to any sub-agreement or procurement as SCDOT may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in that event an MPO (policy committee or fiscal agent) may request the United States to enter into such litigation to protect the interests of the United States.

Article 21. Nondiscrimination on the Basis of Disability

The MPO agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The MPO shall ensure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth at 49 CFR Part 27, and any amendments thereto.

Article 22. Disadvantaged Business Enterprise Program Requirements

It is the policy of the U.S. Department of Transportation that Minority Business Enterprises as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently the Minority Business Enterprise requirements of 49 CFR 26, apply to this Agreement as follows:

- The MPO agree to ensure that Minority Business Enterprises as defined in 49 CFR 26, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, the MPO (policy committee and fiscal agent) shall take all necessary and reasonable steps in accordance with 49 CFR 26, to ensure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts.
- The MPO and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts funded in whole or in part with federal funds.

These requirements shall be included (i.e., written literally) in the language of any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of Agreement and, after the notification of SCDOT, may result in termination of the Agreement by SCDOT or other such remedy as SCDOT deems appropriate.

Article 23. Procurement

The MPO shall maintain (the approved) written procurement procedures that meet or exceed the requirements of 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreement with State and Local Governments," as it may be revised or superseded. These procedures will be used for all acquisitions authorized in any UPWP. The MPO will provide a signed Local Project Agreement annual with the UPWP acknowledging the required coordination between the MPO, SCDOT, and FHWA for procuring consultant services.

The MPO agrees to comply with applicable Buy America requirements set forth in Section 401 of the Surface Transportation Assistance Act of 1978 (P.L. 95-599) and the Federal Transit Administration's Buy America regulations in 49 CFR 660.

The MPO agrees to comply with the cargo preference requirements set forth in 46 USC 1241 and Maritime Administration regulations set forth in 46 CFR 381.

Article 24. Environmental Protection and Energy Efficiency

The MPO agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857[h]); Section 508 of the Clean Water Act (33 USC 1368); Executive Order 11738 and Environmental Protection Agency regulations (40CFR, Part 15). The MPO further agrees to report violations to SCDOT.

The MPO agrees to recognize 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 (P.L. 94-163).

Article 25. Property Management

The MPO shall maintain written property management procedures that meet or exceed the requirements of 49 CFR 18, "Uniform Administrative Requirements for Grants and Agreements with State and Local Governments," as it may be revised or superseded. These procedures will be used for any property acquired in whole or in part with federal and state funds provided through this Agreement.

Article 26. Audit

The MPO shall comply with the requirements of OMB Circular A-133, "Audit Requirements for State and Local Governments," and shall promptly furnish SCDOT a copy of each audit report. The MPO shall be responsible for any funds determined to be ineligible for

federal reimbursement, and shall reimburse SCDOT the amount of any such funds previously provided to it by SCDOT.

Article 27. Control of Drug Use

The MPO agrees to comply with the terms of the Federal Transit Administration regulation, "Control of Drug Use in Mass Transportation Operations," set forth at 49 CFR Part 655, and Section 44-107-30 South Carolina Code of Laws (1976) as amended.

Article 28. Restrictions on Lobbying

Pursuant to Section 319 of Public Law 101-121, which generally prohibits recipients of federal funds from using those monies for lobbying purposes, the MPO shall comply with the Special Provision "New Restrictions on Lobbying."

Article 29. Amendments

Any changes to one or more of the terms and conditions of this Agreement shall not be valid unless made in writing and agreed to by the parties hereto before the change is implemented.

Article 30. Distribution of Products

The MPO will provide a number of copies to be specified by SCDOT of all information, reports, proposals, brochures, summaries, written conclusions, graphic presentations, and similar materials developed by the MPO and the Policy Committee and financed in whole or in part as provided herein. All reports published by the MPO shall contain a prominent credit reference to SCDOT and the U.S. Department of Transportation, Federal Highway Administration and Federal Transit Administration:

*Prepared in cooperation with the South Carolina Department of Transportation and the U.S. Department of Transportation, Federal Highway Administration and Federal Transit Administration.*

Upon termination of this Agreement, all documents prepared by the MPO or furnished to the MPO and the Policy Committee by SCDOT, shall be delivered to SCDOT. All such documents, photographs, calculations, programs and other data prepared or used under this Agreement may be used by SCDOT without restriction or limitation of further use.

Article 31. Legal Construction

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

This Agreement is to be interpreted under the laws of the State of South Carolina.

Article 32. Prior Agreements

This Agreement constitutes the sole and only Agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

Article 33. Copyrights

SCDOT and the U.S. Department of Transportation shall, with regard to any reports or other products under this Agreement, reserve a royalty free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Article 34. Signatory Warranty

The undersigned signatories hereby represent and warrant that they are officers and that they have full and complete authority to enter into this Agreement.

Article 35. Successors and Assigns

The MPO or SCDOT shall not assign or transfer its interest in this agreement without written consent of the other parties.

Article 36. Entire Agreement

This agreement with attached Exhibits and Certifications constitutes the entire Agreement between the Parties. The Contract is to be interpreted under the laws of the State of South Carolina.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed, but the Agreement shall not be valid until signed by a duly authorized representative of each party.

Signed, sealed and executed for MPO.

SUMTER AREA TRANSPORTATION  
STUDY METROPOLITAN PLANNING  
ORGANIZATION (MPO)

WITNESS:

*Ronda D. Hammett*

By: *Joseph M. ...*  
(Signature)

Title: *Mayor of Sumter*

\*Authorized to enter into this Agreement on behalf of the MPO by virtue of action in Exhibit A.

Signed, sealed and executed for MPO.

WITNESS:

*Julie A. Scarborough*

(FISCAL AGENT FOR MPO)

By: *Morgan ...*  
(Signature)

Title: *SUATS Director*

\*Fiscal Agent for MPO by virtue of action shown in Exhibit B.

*PTD*

Signed, sealed and executed for SCDOT.

WITNESS:

*[Signature]*

SOUTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

By: *[Signature]*  
Deputy Secretary for Engineering

RECOMMENDED:

*MCS  
MP*

By: *[Signature]*  
Director of Planning and Environmental

EXHIBIT A

AUTHORITY TO ACT ON BEHALF OF THE MPO

Certification for Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6/7/13  
DATE

3-26-13  
DATE

  
DEPARTMENT SIGNATURE

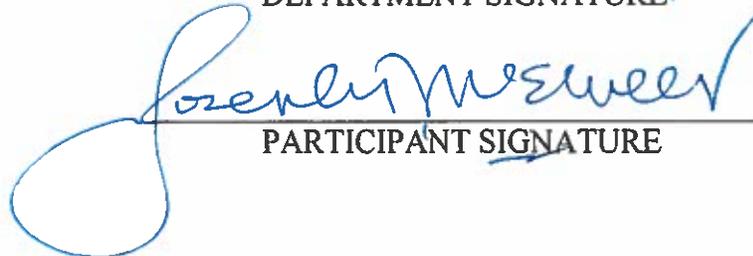
  
PARTICIPANT SIGNATURE

EXHIBIT B

AUTHORITY TO ACT AS FISCAL AGENT FOR THE MPO

**LOCAL PROJECT AGREEMENT (LPA)  
COORDINATION REQUIREMENTS FOR PROCUREMENT OF CONSULTING  
SERVICES**

The following process is intended to comply with LPA requirements by ensuring eligibility of planning activities utilizing Federal-Aid funds. Planning activities by definition do not include findings required by National Environmental Policy Act (NEPA), preliminary engineering, the acquisition of real property, or the management/oversight of construction projects. Federal funds may include PL, SPR, STP, NHPP, CMAQ or any other Federal-Aid Program funds. In the event that the MPO, COG or sub-recipient intends to procure consulting services utilizing federal funds to complete tasks outlined in the approved Unified Planning Work Program (UPWP) or Rural Planning Work Program (RPWP), the following steps must be adhered to in sequence in order to ensure federal participation in the project:

**STEP 1**

- Ensure that the project is included the UPWP or RPWP
- Submit a draft scope of work in sufficient detail to determine that all work elements are eligible under Title 23 USC
- Submit a draft advertisement that will be used in South Carolina Business Opportunities (SCBO)
- Submit an internal estimate of the project cost
- Receive a notice to proceed from SCDOT to advertise the request for proposal

**STEP 2**

- Include the SCDOT and FHWA as non-voting members of the selection committee
- Submit a recommendation to SCDOT for approval of the selected firm(s) with documentation of the evaluation process
- Submit a copy of the negotiation process
- Receive notice to proceed from SCDOT

**STEP 3**

- Submit a copy of the draft agreement
- Receive final notice from SCDOT to execute agreement and initiate project

I hereby acknowledge that all procurement activities will follow the above described steps. Any deviation for this process will jeopardize federal reimbursement for the project.

3-14-2013

DATE

  
\_\_\_\_\_  
MPO/COG PLANNING AGENCY DIRECTOR

If applicable:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SUB-RECIPIENT