Washington State Department of Transportation

Metropolitan/Regional Transportation Planning Organization Agreement			Term of Agreement		
			Start Date	End Date	Fiscal Period
Agreement No.	CFDA No. 20.205 & 20.505	WSDOT Region	July 1, 2011	June 30, 2013	11-13
Lead Planning Agency			Metropolitan Planning Organization/Regional Transportation Planning Organization		
			County(ies) included in the MPO/RTPO		

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."

WHEREAS, the above named county(ies) has 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.

WHEREAS, the STATE has funds available, allocated to the STATE 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.

NOW THEREFORE, pursuant to 39.34 RCW, the above recitals that are incorporated herein as of set forth below, and in consideration of the terms, conditions, and promises contained herein, it is mutually agreed as follows:

1. Work Scope and Budget

1.1 The work scope and budget for this Agreement shall be documented annually (or biennially with an annual review) in a Unified Planning Work Program hereinafter called "UPWP". The UPWP is on file in the Washington State Department of Transportation Headquarters Transportation Planning Office.

1.1.A. The Unified Planning Work Program Guidelines developed jointly by the State, FHWA, FTA and the MPOs/RTPOs 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. The MPO/RTPO will then prepare a draft UPWP and submit the draft to the STATE by March 16 or a minimum of ten (10) calendar days prior to the UPWP review meeting each year.

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 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. However, the MPO/RTPO may prepare a two year UPWP if they desire. Amendments to the two year UPWP will be required in order to authorize expenditure of all federal funding and to manage federal obligation authority changes to the federal surface transportation act will also necessitate potential amendments to UPWPs.

1.3 The UPWP shall document all transportation and related planning activities for the ensuing state fiscal year, July 1 to June 30. 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 activities that address the planning factors in Sec. 450.306(a)), in sufficient detail to indicate who (e.g., MPO, State, public transportation operator, local government, or consultant) 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 RTPO/MPO staff performing the work, and a budget which itemizes funding sources by work element and task. Local match 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 Section 5303 funds will be 20% or as low as 13.5% 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 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 RTPO/MPO.

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 contained in an approved UPWP. 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.

The MPO/RTPO shall submit to the STATE requests for funds as they are expended on UPWP activities, but not to exceed 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 provide the STATE, FHWA, and FTA 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 make payment within thirty (30) calendar days after approval of the payment request.

5. Reports

5.1 The MPO/RTPO shall, from time to time during the progress of the work, confer with the STATE. The STATE reserves the right to request an interim progress report(s) during the fiscal year. The interim report(s) is due to the STATE within twenty one (21) calendar days of being notified in writing by the STATE. The interim report(s) 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 report(s) is not submitted in a timely manner.

5.2 Within ninety (90) calendar days 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 to the STATE to contribute to the annual performance and expenditure report prepared by the STATE provided to FHWA and FTA pursuant to 23 CFR 420.117(b)(1). This final report shall summarize work accomplished under the UPW, costs incurred by work element, and shall identify any carryover of funds as described below:

"The State DOT must submit performance and expenditure reports, including a report from each sub-recipient that contains as a minimum:

(i) Comparison of actual performance with established goals;

(ii) Progress in meeting schedules;

(iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;

(iv) Cost overruns or underruns;

(v) Approved work program revisions; and

(vi) 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 properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

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 with respect to all matters covered by this Agreement. Such 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.

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 involving the records 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 in these provisions. 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 Terms 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 noncancelable obligations, both direct and indirect, incurred to the date of termination.

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 are subject to state travel rules as outlined in the State Administrative & Accounting Manual (SAAM). All travel by MPOs using federal funds are subject to federal rules and regulations as outlined in 2 CFR 225. All travel by the MPO, using federal funds, must be in compliance with their 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 are to be directed by a Project Manager. The MPO/RTPO shall not assign, sublet, 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 the 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 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 4220.1D, "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.

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

13.2.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.

13.2.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 381 to the extent those regulations apply to the project.

13.2.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 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301 -10.131. - through 301-10.143.

13.2.B. **Geographic Restrictions.** The MPO/RTPO or 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.

13.2.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 4220.1D, 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 any of its similar contracts.

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/RTPOs 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/RTPOs 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/RTPOs 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:

17.2.A. The employee, officer, board member, or agent;

17.2.B Any member of his or her immediate family;

17.2.C His or her partner; or

17.2.D 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 12689, "Debarment and Suspension," 31 U. S.C. § 6101 note, and USDOT regulations on Debarment and Suspension at 49 CFR Part 29, 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. A MPO/RTPO may rely on that certification unless it knows that it is erroneous.MPO/RTPO may check for suspended or debarred parties in the List of Parties Excluded From Federal Procurement or Non-procurement Programs issued by the U.S. General Services Administration. A list of parties excluded is available on the GSA website at www.arnet.gov/epls.

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 WSDOT**. The MPO/RTPO shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the MPO/RTPO rent or purchase any equipment and materials from any employee or officer of WSDOT.

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 WSDOT without written consent of WSDOT.

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

17.8.A. Refrain from using Federal assistance funds to support lobbying; and

17.8.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.

17.8.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, except through proper, official channels.

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.

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:

18.4.A. The MPO/RTPO agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, 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, creed, 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.

18.4.B. If the MPO/RTPO is required to submit and obtain Federal Government approval of its 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/RTPOs 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 the requirements of 49 U.S.C §5301 (d) which state the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement said policy. The MPO/RTPO also 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:

18.7.A. USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;

18.7.B. USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;

18.8.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;

18.8.D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;

18.8.E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;

18.8.F. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;

18.8.G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;

18.8.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;

18.8.I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and

18.8.J. Any other nondiscrimination statute(s) that may apply to the Project.

18.9 **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, Pub. L. 92 -255, March 21, 1972, as amended; the Comprehensive Alcohol abuse and alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, December 31, 1970, as amended; and the Public Health Service Act of 1912, as amended, 42. U.S.C. sections 290dd-3, and any subsequent amendments to these acts.

18.10 **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.

18.11 **Other Nondiscrimination Statues**. 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 TEA-21, 23 U.S.C. § 101 note, and USDOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and 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 act's, 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 such instructions the STATE may issue 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 act's, 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 an intentional or negligent act or omission 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.

Further, the RTPO/MPO specifically assumes potential liability for actions brought by RTPO/MPO's own employees or agents against the WSDOT and, solely for the purpose of this indemnification and defense, the RTPO/MPO specifically waives any immunity under state industrial insurance laws, Title 51 RCW. The provisions of this section 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 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 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 (b)(1) of 29 CFR Section 5.5, 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 (b)(1) of 29 CFR Section 5.5 in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of 29 CFR Section 5.5.

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 subparagraph (b)(2) of 29 CFR Section 5.5.

24. 4. **Nonconstruction Grants**. MPO/RTPO or subcontractor shall maintain payrolls and basic payroll records during the course of work and shall preserve 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 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 or the MPO/RTPO 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 the intent of this contract.

METROPOLITAN PLANNING ORGANIZATION/ REGIONAL TRANSPORTATION PLANNING ORGANIZATION

By:
Signed: _____

Printed Name: _____

Title: _____

Date: _____

State of Washington, Department of Transportation

By:
Signed: _____

Printed Name: _____

Title: Director, Strategic Planning Division

Date: _____