

AGREEMENT  
FOR THE USE OF  
FEDERAL TRANSIT ADMINISTRATION  
SECTION 5303 METROPOLITAN PLANNING FUNDS

VA-2019-026

FISCAL YEAR 2020

PROJECT 46020-05

HAMPTON ROADS TRANSPORTATION PLANNING ORGANIZATION  
(Hampton Roads Area Metropolitan Planning Organization)

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This Project Agreement (“Agreement”), effective July 1, 2019, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and the Hampton Roads Transportation Planning Organization, as the local agency designated to be the fiscal and administrative agent for coordination of the Hampton Roads Area Metropolitan Planning Organization (“Grantee”) (collectively, the “Parties”), is for the provision of funding for Hampton Roads Area Metropolitan Planning Organization (“MPO”) operating assistance and planning projects in the approved Unified Planning Work Program (“UPWP”) (“Project”).

WHEREAS, Title III - Federal Transit Act Amendments of 1991 - provides that it is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight, and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes; and

WHEREAS, the Governor of the Commonwealth of Virginia, in accordance with a request from the Federal Transit Administration (“FTA”), has designated the Department to administer its Section 5303 Metropolitan Planning; and

WHEREAS, 49 U.S.C. § 5303 funding is available to the Department for use in transit planning; and

WHEREAS, the Parties desire to secure and utilize these grant funds.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

### **SECTION 1. Provision of Federal Grant Funding**

Provided that the terms of this Agreement are met, the Department agrees to make available to the Grantee \$661,233 in 49 U.S.C. § 5303 Federal funds to carry out the work activities described in the approved UPWP for the urbanized area. It is understood that in this Agreement, the Department is merely serving as the entity to distribute Federal government funding, and the funds provided in this Agreement are not Commonwealth of Virginia (“Commonwealth”) funds.

Federal funds provided in this Agreement are contingent upon FTA funding. In no event shall the Department be liable to the Grantee for any portion of the Federal share of the Project cost. The Department’s responsibility for the Project cost shall be limited to the cost of coordination and processing of the Grantee’s reimbursement requests to the FTA.

### **SECTION 2. Non-Federal Share of Funding**

The Grantee agrees that it will provide funds from sources other than Federal funds (“Non-Federal Share”), except as may otherwise be authorized by Federal statute, in an amount sufficient, together with the funds provided pursuant to this Agreement, to assure payment of the actual cost of the Project. The Grantee further agrees that no refund or reduction of the Non-Federal Share amount will be made at any time, unless

there is at the same time a refund to the Department of a proportional amount of the funds provided pursuant to this Agreement. The Grantee's obligation to provide the Non-Federal Share is calculated on the Project as a whole.

### **SECTION 3. Project Budget**

The Project Budget is the latest requested by the Grantee and approved by the Department. The Project Budget is contained in the attached Appendix A and is made a part of this Agreement. The Grantee shall carry out the Project and shall incur obligations against and make disbursements of the Project funds only in conformity with the latest approved budget for the Project.

### **SECTION 4. Requisitions and Payments**

a. Requests for Payment by the Grantee. The Grantee will make requests for payment of eligible project costs as defined in 23 U.S.C. § 601. The request for payment will be for the Federal share of the total Project cost at the rate of Federal participation as shown in the Project Budget in Appendix A. In order to receive payments, the Grantee must:

1. Submit a reimbursement request in the OLGA Grants Management System to the Department; and
2. Identify the source or sources of the non-Federal share of financial assistance under this Project from which the payment is to be derived.

b. Upon receipt of satisfactory documentation, the Department will use all reasonable means to electronically transfer funds for the Federal share of allowable costs to the Grantee within 30 days.

## **SECTION 5. Termination**

For convenience. The Department may terminate this Agreement at any time without cause by providing written notice to the Grantee of such termination. Termination shall be effective on the date of the receipt of notice by the Grantee. In the event of such termination, the Grantee shall be compensated for eligible project costs, as defined in 23 U.S.C. § 601, through the date of receipt of the written termination notice from the Department.

## **SECTION 6. Contracts of the Grantee**

Without prior written authorization by the Department, the Grantee shall not: (1) assign any portion of the work to be performed under this Agreement; (2) execute any contract, amendment, or change order concerning this Agreement; or (3) obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement. Further, the Grantee may not issue a Request for Proposal (“RFP”) that uses 49 U.S.C. § 5303 funds without prior review and approval of the RFP by the Department.

## **SECTION 7. Restrictions, Prohibitions, Controls, and Labor Provisions**

The Grantee shall comply with all of the restrictions, prohibitions, controls, and labor provisions set forth in Appendix B, attached and made a part of this Agreement.

## **SECTION 8. Liability Waiver and Insurance Requirements**

The Grantee shall not seek redress for damages or injury caused in whole or in part by the Commonwealth or the Department, and their respective officers, agents, and employees acting within the scope of their duties. The Grantee shall reimburse the Commonwealth, the Department, and their respective officers, agents, and employees for any damage or injury arising from or relating to the use by the Grantee, its officers, agents, or employees of funds provided under this Agreement.

The Grantee hereby certifies that it is covered by and will keep in force either: (a) a comprehensive liability self-insurance plan administered by Virginia's Division of Risk Management providing protection against liability and claims pursuant to § 2.2-1839 of the *Code of Virginia* (1950), as amended (the "DRM Plan"); (b) a commercial insurance policy acceptable to the Department ("Commercial Insurance"); or (c) a liability self-insurance program acceptable to the Department providing equal or better coverage than the DRM Plan ("Self-Insurance Program").

(a). The DRM Plan. If the Grantee chooses to satisfy its obligations under this Section by procuring the DRM Plan:

1. The Commonwealth and the Department, and their respective officers, agents, and employees shall be "additional covered parties" under the DRM Plan.
2. The Grantee shall provide the Department a Certificate of Liability Coverage that states, "The Commonwealth and the Department, and their respective officers, agents, and employees shall be

indemnified to the extent permitted by law in terms of being added as additional covered parties pursuant to and specific to this Certificate.”

- (b). Commercial Insurance. If the Grantee chooses to satisfy its obligations under this Section by procuring Commercial Insurance:
  1. The Grantee shall obtain an endorsement to the Commercial Insurance naming the Commonwealth and the Department, and their respective officers, agents, and employees as additional insureds under the policy.
  2. The Grantee shall provide the Department a Certificate of Insurance providing evidence of the required coverage and naming the Commonwealth and the Department, and their respective officers, agents, and employees as additional insureds.
- (c). Self-Insurance Program. If the Grantee chooses to satisfy its obligations under this Section through a Self-Insurance Program:
  1. The Grantee shall provide evidence of the authority for such Self-Insurance Program, evidence of the limits of the Self-Insurance Program, and evidence that the Self-Insurance Program is funded to an actuarially sound level.
  2. The Grantee shall provide the Department with a certificate or letter from an authorized Grantee official confirming coverage for the duration of the Agreement.

The requirements of this Section shall not be deemed to limit any other obligations or liabilities of the Grantee.

The Grantee shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages.

#### **SECTION 9. Compliance with Title VI of the Civil Rights Act of 1964**

The Grantee shall comply with the provisions of Title VI of the Civil Rights Act of 1964, and the provisions of Appendix C, attached and made a part of this Agreement.

#### **SECTION 10. Incorporation of Provisions**

The Grantee shall make all covenants and provisions of this Agreement a part of any contracts and subcontracts relating to the Project which utilize the funds provided in this Agreement. These covenants and provisions shall be made binding on any contractor, subcontractor, and their agents and employees. In addition, the following required provision shall be included in any advertisement for procurement for the Project:

Statement of Financial Assistance: This contract is subject to a financial assistance contract between the Commonwealth of Virginia and the United States Department of Transportation (“U.S. DOT”).

## **SECTION 11. Special Provisions**

### **a. Special Condition Pertaining to Financing Section 5303 Projects**

Sufficient funds must be available in the Mass Transit Account of the Highway Trust Fund and an adequate liquidating cash appropriation must have been made before payments may be made to the Grantee under 49 U.S.C. § 5303.

### **b. Special Requirement for Section 5303 Projects**

Planning - The transportation plans and programs that are developed as part of this Project shall be formulated on the basis of transportation needs with the development of comprehensive long-term financial plans, and due consideration of long-range land use plans, developed objectives, and overall social, economic, environmental, system performance, and energy conservation goals and objectives, and with due consideration to their probable effect on the future development of the urban areas described in the application. The planning process shall include an analysis of alternative transportation system management and investment strategies to make more efficient use of existing transportation resources and to meet the needs for new transportation facilities. The process shall consider all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate based on the complexity of the transportation problems. Furthermore, the plans and programs that are developed as part of this Project shall encourage to the maximum extent feasible the participation of private enterprise. Should facilities and equipment already being used in mass transportation service in the urban area be acquired, the program

must provide that they shall be so improved that they will better serve the transportation needs of the area.

## **SECTION 12. Other FTA Requirements**

The Grantee shall comply with all applicable provisions of the FTA Master Agreement posted on the FTA website at [www.fta.dot.gov](http://www.fta.dot.gov).

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IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: Steve Pittard  
Director

Date Signed: 8/28/2019

HAMPTON ROADS TPO

By: Michael Kimbrel

Title: Deputy Executive Director

Date Signed: 8/23/2019

## **Appendix A: Project Description and Budget**

**Grantee: Hampton Roads Transportation Planning Organization, as the Local Agency Designated to be the Fiscal and Administrative Agent for Coordination of the Hampton Roads Area MPO**

**Project: MPO Operating Assistance and Planning Projects in the Approved UPWP**

**CFDA# 20505 Section 5305 (5303) Planning**

**FTA Grant VA-2019-026**

**Project Number: 46020-05**

**Project Start Date: July 1, 2019**

**Project Expiration Date: December 31, 2020**

| <b>Fund<br/>Code</b> |  | <b>Item<br/>Amount</b> |
|----------------------|--|------------------------|
| 401                  | Federal Grant Amount (share of Project cost - 80%) | \$661,233              |
| 477                  | State expense (share of Project cost - 10%)        | \$ 82,655              |
| 1400                 | Local expense (share of Project cost - 10%)        | \$ 82,655              |
|                      | <b>Total Project Expense</b>                       | <b>\$826,543</b>       |

In no event shall this grant exceed \$661,233.

## **Appendix B: Restrictions, Prohibitions, Controls, and Labor Provisions**

- a. The Grantee, its agents, employees, assigns, or successors, and any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with this Agreement, shall not discriminate against any employee or applicant for employment because of age, race, religion, handicap, color, sex, or national origin. The Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their age, race, religion, handicap, color, sex, or national origin. Such actions shall include, but not be limited to, the following: 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.
- b. Disadvantaged Business Enterprises (“DBE”). It is the policy of the U.S. DOT that DBEs, as defined in 49 C.F.R. pt. 26, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with the Federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. pt. 26 apply to this Agreement.

The recipient or its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. pt. 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. pt. 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The recipient will utilize the Virginia Department of Transportation’s DBE program, as required by 49 C.F.R. pt. 26 and as approved by the U.S. DOT, which is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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 of 1986 (31 U.S.C. § 3801 *et seq.*).

Pursuant to the requirements of 49 C.F.R. pt. 26, the following clause must be inserted in each third party contract:

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. pt. 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1)

withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.”

- c. Interest of Member of, or Delegates to, Congress. No member of, 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.
- d. Conflict of Interest. The Grantee and its officers and employees shall comply with the provisions of the State and Local Government Conflict of Interests Act, §§ 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended.
- e. The Grantee, its agents, employees, assigns, or successors, and any persons, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Fair Employment Contracting Act, §§ 2.2-4200 *et seq.* of the *Code of Virginia* (1950), as amended.

## **Appendix C: Title VI**

During the performance of this Agreement, the Grantee, for itself, its assignees, and successors in interest, agrees as follows:

- a. **Compliance with Regulations**: The Grantee shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (U.S. DOT), 49 C.F.R. pt. 21, as amended (“Regulations”).
- b. **Nondiscrimination**: The Grantee, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Grantee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding or negotiation, made by the Grantee for work to be performed under a subcontract, including procurements of materials, leases, or equipment, each potential subcontractor or supplier shall be notified by the Grantee of the Grantee's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports**: The Grantee shall provide all information and reports developed as a result of or 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 the Department or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Grantee is in the exclusive possession of another who fails or refuses to furnish this information, the Grantee shall so certify to the Department or the FTA, as appropriate, and shall set forth the efforts it has made to obtain this information.
- e. **Sanctions for Noncompliance**: In the event of the Grantee's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such Agreement sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  1. Withholding of payments to the Grantee under the Agreement until the Grantee complies; and/or
  2. Cancellation, termination, or suspension of the Agreement in whole or in part.

f. **Incorporation of Provisions:** The Grantee shall include the requirements of paragraphs a through f in every subcontract (making clear that the requirements on the Grantee are in turn required of all subcontractors), including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Grantee shall take such action with respect to any subcontract or procurement as the Department or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Grantee becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Grantee must immediately notify the Department so that steps can be taken to protect the interests of the Department and the United States.