

AGREEMENT

BY AND BETWEEN

THE MARYLAND DEPARTMENT OF TRANSPORTATION

AND

THE CALVERT-ST. MARY'S METROPOLITAN PLANNING ORGANIZATION

This Agreement is entered into this 28 day of October, 2014 between the Maryland Department of Transportation (herein referred to as "MDOT") and the Calvert-St. Mary's Metropolitan Planning Organization (C-SMMPO), and collectively both entities are herein referred to as the "PARTIES."

WITNESSETH:

WHEREAS, the Urban Mass Transportation Administration, currently the Federal Transit Administration, (herein referred to as the "FTA") and the Federal Highway Administration (herein referred to as the "FHWA") on June 30, 1983 jointly issued rules and regulations which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative and comprehensive transportation planning process carried out by a Metropolitan Planning Organization (MPO) in cooperation with the State that results in plans and programs consistent with the planned development of the urbanized area pursuant to 23 U.S.C. § 105(d) and 134(a), Section 5(g) of the Urban Mass Transportation Act (49 U.S.C. §1604(g) and Subpart C of Part 450); and

WHEREAS, on July 6, 2012 the President of the United States signed into law MAP-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) which reiterates the need for the "3-C" planning process; and

WHEREAS, the 1990 Clean Air Act Amendments, signed into law on November 15, 1990, requires the preparation of a new State Implementation Plan (SIP) for the purposes of demonstrating attainment of national ambient air quality standards, and further identifies specific responsibilities of MPOs relating to air quality planning and the determination of conformity of transportation plans and programs consistent with the SIP; and

WHEREAS, MDOT is obliged to abide by the regulations and tenets of MAP-21 and all subsequent federal transportation acts; and

WHEREAS, MDOT was established as a principal department within the Executive Branch of the Government of the State of Maryland, effective July 1, 1971 by Chapter 526 of the Laws of Maryland of 1970, and is required by State law to prepare Statewide multi-modal transportation plans and programs; and

WHEREAS, the C-SMMPO was designated as the Metropolitan Planning Organization for the Lexington Park—California—Chesapeake Ranch Estates Urbanized Area by an agreement entered into by and among the Governor of the State of Maryland, St. Mary's County and Calvert County, Maryland; and

WHEREAS, on December 31, 2013, the agreement was forwarded by the Governor to the Secretary of the U.S. Department of Transportation, thereby establishing the C-SMMPO; and

WHEREAS, MDOT has the legal authority to act as the designated recipient of FTA and FHWA transportation planning funds on behalf of urbanized areas; and

WHEREAS, the Unified Planning Work Program (herein referred to as the UPWP) will be approved by FTA and by FHWA for a portion of the cost of approved projects; and

WHEREAS, the C-SMMPO desires to annually undertake or manage studies shown in the UPWP; and

WHEREAS, pursuant to Section 2-103(i) of the Transportation Article of the Annotated Code of Maryland, the Secretary of Transportation is authorized to make grants-in-aid to any entity in Maryland for any transportation related purpose.

THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1 – PURPOSE OF AGREEMENT

This Agreement (Agreement) is between the C-SMMPO and MDOT (which includes the State Highway Administration and the Maryland Transit Administration) pursuant to 23 CFR Part 450, Subpart C, 23 CFR 450.314 – *Metropolitan Planning Agreements*. Specifically, this section of federal regulation requires that:

- a) The responsibilities for cooperatively carrying out transportation planning (including corridor and sub-area studies) and programming are identified in this Agreement.
- b) There shall be an agreement between the C-SMMPO and the operators of publicly owned transit services which specifies cooperative procedures for carrying out transportation planning (including corridor and sub-area studies) and programming as required by this subject.

The purpose of this Agreement is to provide for the undertaking of the urban transportation planning process by the MPO, to facilitate the provision of financial assistance to the C-SMMPO in the form of annual grants from MDOT and as the pass-through agency administering Maryland's federal metropolitan planning funds to the MPO, and to state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the transportation planning process will be undertaken and completed.

SECTION 2 – UNIFIED PLANNING WORK PROGRAM (UPWP)

The C-SMMPO will develop the UPWP as specified in 23 CFR 450.308(c).

SECTION 3 – LONG RANGE TRANSPORTATION PLANS

The long range transportation plan for the metropolitan planning area shall be developed by the C-SMMPO cooperatively with MDOT as specified in 23 CFR 450.322. The statewide transportation planning process shall be carried out by MDOT in coordination with the metropolitan planning process as specified in 23 CFR 450.206 (b) and consistent with 23 CFR 450.208 (a)(6).

SECTION 4 – TRANSPORTATION IMPROVEMENT PROGRAM

The C-SMMPO Transportation Improvement Program (TIP) shall be in accordance with 23 CFR 450.324, as amended from time to time.

The process for developing the TIP will be consistent with the MDOT's annual Consolidated Transportation Program Consultation Tour (Consolidated Tour). The Consolidated Tour is conducted annually pursuant to Section 2-103.1(e) of the Transportation Article of the Annotated Code of Maryland. The C-SMMPO will be represented at the St. Mary's County and Calvert County pre-tour staff meeting and may provide input relating to a regional transportation planning perspective on proposed capital projects.

Amending or Administratively Modifying the TIP: The C-SMMPO TIP will be amended or administratively modified when necessary to reflect changes in project schedule and/or funding. The process for amending or administratively modifying the TIP will be consistent with the latest Memorandum of Understanding for TIP Modification Procedures between US DOT and MDOT.

SECTION 5 -- AIR QUALITY PLANNING

The Environmental Protection Agency (EPA) has designated Calvert County as being "marginal non-attainment for ozone." St. Mary's County is in attainment for this standard and both Counties are in attainment for the Particulate Matter (PM 2.5) standard. There shall be developed an agreement as required by 23 CFR 450.314.

SECTION 6 – GENERAL COORDINATION ON PLANNING PROCESS

Other Transportation Studies - The PARTIES may undertake specific transportation studies (for example, corridor or sub area studies). The Parties agree to coordinate and consult by sharing the scope of work or other project information regarding the study, upon request, and by inviting participation in steering committees, technical committees, management committees, or similar bodies organized for the purpose of managing the study. No party to this Agreement shall be denied participation in a steering committee, technical committee, management committee, or other study management and agency coordination effort for any study undertaken by a party to this Agreement.

The PARTIES will monitor the implementation of various studies or other elements of the C-SMMPO long-range transportation plan. MDOT agrees to share project information and implementation updates, to invite participation in project monitoring forums, and to generally coordinate with the C-SMMPO on project monitoring tasks.

SECTION 7 – RESPONSIBILITY FOR COMPLIANCE WITH FEDERAL REQUIREMENTS

In the performance of its obligations under this Agreement and the UPWP, the C-SMMPO, its agents, employees and assigns shall comply with all federal requirements, including, but not limited to, those contained in the FTA Circular 4220.1A and those set forth in the Federal-Aid Highway Program Manual, Volume 4, Chapter 4, Section 2 of the FHWA, as amended from time to time.

SECTION 8 – PROJECT BUDGET AND FINANCING

The budget and the maximum expenditure to be charged to the UPWP will be contained in an annual authorization letter to be provided by MDOT to the C-SMMPO prior to July 1st of each year. The budget as contained in the approved UPWP will be broken down by task and funding source. UPWP cost allocations shall conform to the latest approved budget. Reallocation of grant funds among budget line items as may be deemed necessary, which do not increase the maximum amount of grant funds appropriated, will not require prior approval by MDOT.

SECTION 9 – PROGRAM RESPONSIBILITIES AND FINANCIAL REPORTING

The C-SMMPO shall be responsible for undertaking the tasks in the approved UPWP. Such responsibilities shall include, but shall not be limited to:

- Submission to MDOT of quarterly progress reports which shall include a statement of the work done by all staff and consultants under the UPWP.
- Submission to MDOT of such other reports relative to the Planning Process in such form and at such times as may be agreed to.

The C-SMMPO will serve as a forum for regional transportation planning decision-making by the member agencies and will perform all functions of an MPO as specified by the most current federal MDOT shall assist the C-SMMPO with the administration of the planning process, including but not limited to:

- Technical aid and assistance to the C-SMMPO for the completion and execution of the UPWP and in assuring compliance with applicable regulations and guidelines of FTA, FHWA and MDOT.
- Making available to the C-SMMPO any existing research material, data, maps and other statistical records applicable to the Planning Process.

- Preparation and submission to FHWA and FTA of required UPWP progress and financial reports.
- Submission to FHWA and FTA for approval any consultant contracts, as required, draft final reports, and final reports.

SECTION 10 – ADMINISTRATION OF AGREEMENT

The C-SMMPO shall designate their respective County Planning Directors or their designees to act on behalf of the C-SMMPO in the administration of this Agreement and the conduct of the Planning Process.

The Director, Office of Planning and Capital Programming of MDOT, or his/her designee, shall be the authorized agent on behalf of MDOT in the administration of the Agreement.

SECTION 11 – TIME OF PERFORMANCE

The Planning Process will be conducted on an annual basis, will extend from July 1st to June 30th, and will be renewed annually by an authorization letter from MDOT to the C-SMMPO.

SECTION 12 – COMPENSATION AND METHOD OF PAYMENT

Payments shall be made by MDOT to the C-SMMPO on the basis of monthly or quarterly invoices for payment that shall be submitted by the C-SMMPO to MDOT. Such payments will be calculated in accordance with the division of grant funding set forth in the budget for the approved UPWP.

Monthly or quarterly invoices for payment shall include:

- The actual expenditures of the UPWP incurred on behalf of the C-SMMPO during the period covered by the invoice.
- A certification by the C-SMMPO that all costs charged including any approved services contributed by the C-SMMPO or others are supported by properly executed payrolls, time records, invoices, contracts and vouchers evidencing in detail the nature and propriety of the charges.
- A certification by the C-SMMPO that progress on the UPWP by any consultants retained in connection with the UPWP through the period covered by the invoice has been carried out satisfactorily and in accordance with the contract between the C-SMMPO and a consultant.

Invoices meeting the requirements of this Agreement shall be honored and paid to the C-SMMPO by MDOT promptly after receipt and approval by MDOT of appropriate progress reports in accordance with this Agreement.

SECTION 13 – CHANGES

The PARTIES hereto may, from time to time, request changes in the work and services to be performed by the C-SMMPO. Except as provided in Section 8, such changes, including any increase or decrease in the cost of performing the work and services, must be mutually agreed upon in writing by and between MDOT and the C-SMMPO before they are considered Agreement changes.

SECTION 14 – EXECUTION OF AGREEMENT

This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. This Agreement shall be construed to bind the PARTIES hereto in accordance with the Constitution and Laws of the State of Maryland.

SECTION 15 – ACCOUNTING RECORDS

The C-SMMPO shall establish and maintain a separate set of accounts within the framework of an established accounting system for the UPWP in a manner consistent with 49 C.F.R. Subsection 18.20 and OMB circular A-102, as amended, as may be appropriate. All costs attributable to the UPWP shall be charged in accordance with procedures and standards established in OMB circular A-87 Revised “Cost Principles for State and Local Governments.”

SECTION 16 – AUDIT AND INSPECTION OF RECORDS

The C-SMMPO shall comply with the U.S. Office of Management and Budget single audit requirements as specified in OMB circular A-128, “Audits of State and Local Governments.”

The C-SMMPO shall permit the authorized representatives of MDOT, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the C-SMMPO relating to their performance under the Agreement.

Prior to closeout of the UPWP the C-SMMPO will, if requested, furnish audit reports of all expenditures under any subcontracts with a consultant. Such reports will be prepared according to generally accepted accounting principles.

The C-SMMPO will maintain and retain all records and documents relating to the UPWP for three (3) years.

SECTION 17 – TERM

The term of this Agreement shall commence on Dec. 1, 2014 and shall be an ongoing, continuous document providing support to the C-SMMPO by MDOT and shall be subject from time to time to such modifications as shall be mutually agreed upon in writing by the PARTIES hereto as required by law.

SECTION 18 – ASSIGNABILITY

The C-SMMPO shall not assign its interest to this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of MDOT thereto.

SECTION 19 – TERMINATION OF AGREEMENT FOR CAUSE

If, through any cause, the C-SMMPO shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the C-SMMPO shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In the event of termination of this Agreement, the C-SMMPO shall be entitled to receive from MDOT a proportionate share, for just and equitable compensation, for any satisfactory work completed up to the date of termination, in the same proportion of the grant to MDOT as the satisfactory work completed on the UPWP relates to the total cost of the UPWP. In the event of such termination, neither party shall be liable for any damages, penalties, demobilization or contract termination expenses of any nature. In the event of a conflict between this clause and any other clause of this Agreement, this clause shall control.

SECTION 20 – TERMINATION FOR CONVENIENCE OF PARTIES

The C-SMMPO or MDOT may terminate this Agreement at any time without cause, provided it gives written notice to the other party of such termination, which shall be effective on the date of such notice and provided that it has satisfied the financial or other obligations it has incurred under the Agreement up to, but not including the effective date of termination.

SECTION 21 – SEVERIBILITY

In the event any portion of this agreement is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the PARTIES to sever only the invalid portion or provision, and that the remainder of the agreement shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the agreement, or unless deletion of the invalid portion would produce a result inconsistent with the purpose and intent of the PARTIES entering into this agreement.

SECTION 22 – SOVEREIGN IMMUNITY

By entering into this contract the Counties, the Department, and their “employees,” as defined in the Local Government *Tort Claims Act*, §§5- 301 *et seq.* of the *Courts and Judicial Proceedings Article* and in the Maryland *Tort Claims Act*, §§12-101 *et seq.* of the *State Government Article*, do not waive sovereign immunity, do not waive any defenses and do not waive any limitations of liability as may be provided for by law. No provision of this contract modifies and/or waives any provision of either the Local Government *Tort Claims Act* or the Maryland *Tort Claims Act*.

SECTION 23 – DISPOSITION OF DOCUMENTS AND DATA

All finished or unfinished documents, data, surveys, drawings, maps, models, photographs and reports prepared by or for MDOT in accordance with this Agreement shall become the property of MDOT.

SECTION 24 – PUBLICATION, REPRODUCTION AND USE OF MATERIALS

No material produced in whole or in part under the Agreement shall be subjected to copyright in the United States or in any other country. MDOT and the U.S. Department of Transportation shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under the Agreement.

SECTION 25 – EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the C-SMMPO shall not discriminate against any employee or applicant for employment because of age, ancestry, color, disability, race, creed, marital status, national origin, religious or political affiliation, belief or opinion, sex or sexual orientation.

The C-SMMPO shall ensure that applicants are employed, and that employees are treated during their employment without regard to their age, ancestry, color, disability, race, creed, marital status, national origin, religious or political affiliation, belief or opinion, sex or sexual orientation. 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.

SECTION 26 – SMALL, DISADVANTAGED BUSINESS ENTERPRISE

In connection with the performance of this Agreement, the C-SMMPO will ensure that disadvantaged business enterprises shall have the opportunity to compete for subcontract work under this Agreement.

It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises (DBE), as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement.

The recipient and its contractors agree to ensure that DBEs as defined in 49 C.F.R. Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard all recipients and contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of age, ancestry,

color, disability, race, creed, marital status, national origin, religious or political affiliation, belief or opinion, sex or sexual orientation in the award and performance of contracts assisted by the U.S. Department of Transportation.

SECTION 27 – NONDISCRIMINATION

The C-SMMPO will comply with the regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation including FHWA, Volume 4, Chapter 1, Section 2-2-2, Compliance with Title VI of the Civil Rights Act of 1964 for Federal-Aid Contracts and the UMTA Third Party Contracting Clauses.

The C-SMMPO shall comply with the requirements of Section 13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland, any amendments thereto, as applicable, and any Executive Order barring discrimination.

The C-SMMPO will permit access to its books, records, and accounts by MDOT for purposes of any investigation to ascertain compliance with this Section.

In the event of the C-SMMPO's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled in whole or in part and the C-SMMPO may be declared ineligible for further grants from MDOT.

SECTION 28 – SUSPENSION AND DEBARMENT

The C-SMMPO shall obtain from its third party contractors, sub-grantees, and sub-recipients certifications required by the U.S. Department of Transportation and OMB regulations, "Non-procurement suspension and debarment," 2 C.F.R. Part 1200, and otherwise comply with the requirements of those regulations.

SECTION 29 – THIRD PARTY BENEFICIARY

It is specifically agreed between the PARTIES executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein without the written consent of the C-SMMPO and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof in fulfilling the obligations of the Agreement.

SECTION 30 – NO INDIVIDUAL LIABILITY

No elected official, appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under this Agreement and any extension or renewals thereof provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

SECTION 31 – SUFFICIENT APPROPRIATIONS

The C-SMMPO's and State's financial obligations, if any, under this Agreement are contingent upon sufficient appropriations and authorization being made by the respective entity for the performance of this Agreement.

SECTION 32 - INTEREST OF MEMBERS OF CONGRESS

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

SECTION 33 – INTEREST OF MEMBERS OF LOCAL AGENCY AND OTHERS

No officer, member or employee of the C-SMMPO and no other public official of the governing body of the locality or localities in which the Planning Process is situated or being carried out, or of other local public agencies, who exercise any functions or responsibilities in review or approval of the undertakings or carrying out of the planning

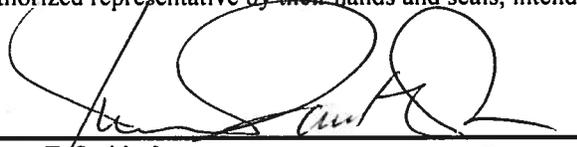
process during his tenure or one year thereafter, shall have any personal interest, direct or indirect, apart from his official duties, in this Agreement or the proceeds thereof.

SECTION 34 – INTEREST OF DEPARTMENT

MDOT covenants that it has presently no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. MDOT further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

NOW, THEREFORE, the PARTIES hereto agree that the above writing constitutes the entire agreement between them concerning this matter and that there are no understandings, promises or arrangements binding either part hereto that have not been written herein. The PARTIES further agree that this Agreement can be amended only by written agreement signed by the PARTIES hereto.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by a duly authorized representative by their hands and seals, intending to be so bound, as of the day and year above written.


James T. Smith, Jr.
Secretary
Maryland Department of Transportation


Victoria Sawaliski
Witness


Pat Nutter, President
Board of County Commissioners
Calvert County, Maryland


Lauren K. Frederica
Witness

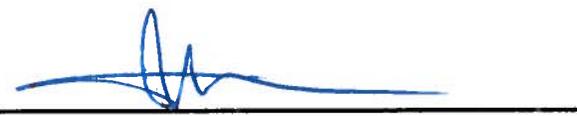

Lawrence D. Jarboe, Commissioner
St. Mary's County, Maryland


Sharon L. Ferris
Witness

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


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