

AGREEMENT BETWEEN THE MORGANTOWN / MONONGALIA COUNTY
TRANSPORTATION PLANNING ORGANIZATION AND THE STATE OF WEST
VIRGINIA, DEPARTMENT OF TRANSPORTATION FOR URBAN TRANSPORTATION
PLANNING AND TRANSPORTATION PROGRAMS

The Morgantown / Monongalia County Transportation Planning Organization, (AGENCY), a Metropolitan Planning Organization (MPO) created pursuant to the designation of the Morgantown, West Virginia area as an Urbanized Area as a result of the 2000 Census, and in accordance with the Transportation Equity Act for the 21st Century (TEA-21), having its principal offices at 386 Spruce Street, Morgantown, West Virginia 26506 and the State of West Virginia, Department of Transportation (WVDOT) having its principal offices at 1900 Kanawha Boulevard East, Charleston, West Virginia 25305, as of the 1st day of July, 2003 agree, covenant, and contract as follows:

SECTION I: PURPOSE

The purpose of this Agreement is to implement 23 U.S.C §134 and 49 U.S.C. §1607, as may be amended, requiring designation of an MPO for the Morgantown, West Virginia Urbanized Area and for such MPO to conduct a continuing, cooperative, and comprehensive urban transportation planning process, including corridor and subarea studies, for the metropolitan area, hereinafter referred to as the "PROCESS". The PROCESS is to result in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. These plans and programs shall lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods. It is the intent of the parties hereto that the PROCESS shall be carried forward on a continuing basis.

The further purpose of this Agreement is to conduct the transportation programs described in the exhibits to this Agreement, under the terms and provisions agreed to and as defined in those exhibits. Said exhibits are made a part hereof, and incorporated by this reference as if fully rewritten herein.

SECTION II: MPO DESIGNATION

WVDOT acting on behalf of West Virginia's Governor Bob Wise, hereby designates the Policy Committee of the Morgantown Area Transportation Study, as the Morgantown / Monongalia County Transportation Planning Organization for the Morgantown, West Virginia Urbanized Area. The Policy Committee is hereby delegated the authority and responsibility for the direction, coordination and administration of the PROCESS. Consistent with 23 CFR Part 450.306(i), the Policy Committee shall be comprised of representatives of the county, all municipalities, and operators of publicly owned transit services within the "AREA" (as defined in Section III), as

enumerated in an Agency PROSPECTUS.

This Policy Committee, as the forum for cooperative transportation decision making, shall be comprised of at least 51% locally elected officials.

The Policy Committee shall be assisted by a Technical Advisory Committee comprised as enumerated in the PROSPECTUS.

SECTION III: MPO BOUNDARY

The parties agree, the PROCESS will be conducted for the area consisting of Monongalia County, West Virginia, including the incorporated municipalities therein, which is hereinafter referred to as the "AREA", or as may be modified by mutual consent of the signatories to this Agreement. As a minimum, without need for additional written consent of the signatories to this Agreement, the AREA will consist of the Urbanized Area as defined by the U.S. Bureau of the Census and the contiguous geographic area(s) likely to be urbanized within the 25 year forecast period covered by the Transportation Plan (23 CFR Part 450.308(a)), except as may be located within the jurisdiction of another Metropolitan Planning Organization. The AGENCY shall prepare an official map of the AREA for approval by the Policy Committee and submit the same to WVDOT.

SECTION IV: TRANSPORTATION PLANNING PROCESS PRODUCTS AND SERVICES

Annually, the AGENCY shall prepare a WORK PROGRAM and budget describing the planning process and associated programs and activities to be performed under this Agreement, with the cost relating to individual work elements and the source of funding thereof. Such WORK PROGRAM and budget shall be approved by the Policy Committee, WVDOT, and other state and federal agencies as necessary, prior to the first day of July of each fiscal year. The WORK PROGRAM is made a part hereof, and incorporated by reference as if fully rewritten herein.

Specifically, the WORK PROGRAM and budget shall record the AGENCY's progress in developing and keeping current the following items, as further described in 23 CFR Part 450, as may be amended:

1. A PROSPECTUS describing the AGENCY'S organizational structure, committee bylaws, and the work to be performed in the conduct of the PROCESS. The PROSPECTUS shall document the interagency agreements and describe the respective agency roles and responsibilities for conducting the PROCESS and transportation related air quality planning.
2. A Transportation Plan, with a 25 year planning horizon, resulting from the PROCESS.
3. A biennially updated Transportation Improvement Program resulting from the PROCESS.
4. A formally adopted Public Involvement Process providing for early and continuing involvement activities in the performance of the PROCESS.
5. A semi-annual Progress Report of events, developments and accomplishments resulting

from the PROCESS.

SECTION V: COORDINATION

The AGENCY shall secure agreements of cooperation with the County, all incorporated municipalities, and the Operators of Publicly Owned Transit Services, within the AREA for carrying forward the PROCESS. If any of these entities is unwilling or unable to participate in the continuation of the PROCESS, a determination shall be made by the parties hereto as to whether the percentage of the AREA or population affected is such as to negate an effective PROCESS for the entire AREA; such determination shall be submitted by WVDOT to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for concurrence.

The AGENCY will make provisions for operators of other major modes or systems of transportation (airports, maritime ports, rail operators, freight operators) operating within the AREA, to participate in the PROCESS.

In areas designated as nonattainment or maintenance for mobile source pollutants under the Clean Air Act, the AGENCY shall secure agreements with the State and local air quality agencies describing the respective roles and responsibilities for addressing transportation related air quality planning in the performance of the PROCESS. If the AREA does not include the entire nonattainment or maintenance area, there shall be an agreement among the MPO, WVDOT, the State air quality agency, and other affected local agencies describing the procedures for determining the transportation conformity of the MPO Transportation Plan and Transportation Improvement Program, in accordance with the U.S. EPA Conformity Rule (40 CFR parts 51 and 93).

The AGENCY acting for itself and as agent for the County and each of the incorporated municipalities within the AREA shall continue the PROCESS for the AREA in conformance with the approved urban transportation planning PROSPECTUS and WORK PROGRAM describing the continued treatment of the elements of the PROCESS, both of which are made a part hereof, and incorporated by this reference as if fully rewritten herein, or as the same may be modified by the AGENCY with the prior approval of WVDOT in accordance with this Agreement.

SECTION VI: TIME OF PERFORMANCE

Approval of the WORK PROGRAM and budget by WVDOT shall constitute authorization to proceed. This Agreement may be terminated by either party to this Agreement upon written notice to the other party. Any such written notice of termination shall include the terminating party's reasons for electing to terminate this Agreement, and the terminating party shall send such written notice of termination by registered U.S. Mail not less than ninety (90) days prior to the effective date of termination.

This Agreement is subject to the determination by WVDOT that sufficient funds have been allocated for the purposes of this Agreement. If WVDOT determines that sufficient funds have not been allocated for the purposes of this contract, this Agreement will terminate on the date that the funding expires without any further obligation by either party.

SECTION VII: COMPENSATION

The approved WORK PROGRAM and budget therein referenced in Section IV shall determine the total compensation to be reimbursed by WVDOT to the AGENCY for professional and technical services in accordance with the terms and conditions specified in this Agreement and the Exhibits. Prior to the beginning of each fiscal year, the WORK PROGRAM and budget shall be provided to WVDOT and other state and federal agencies for their approval. Upon receipt of the WORK PROGRAM and budget, WVDOT will determine the degree of eligibility for participation in the cost of various work elements. The approved WORK PROGRAM and budget shall determine the total compensation to be reimbursed by WVDOT to the AGENCY for professional and technical services in accordance with the terms and conditions specified in this Agreement including any Exhibits attached hereto.

The AGENCY shall obtain and provide the local funds to finance its share of the work contemplated by this Agreement. The AGENCY shall initially pay all costs of the work performed.

Reimbursement for AGENCY WORK PROGRAM expenses funded through this Agreement will be based on AGENCY initiated actual expense invoices. The AGENCY shall submit periodic billings, not more frequently than monthly, to WVDOT for reimbursement for those charges which are eligible for reimbursement in accordance with WVDOT's Standard Operating Procedure as may be modified. Said Standard Operating Procedures is made a part hereof, and incorporated by this reference as if fully rewritten herein.

WVDOT shall process the AGENCY's invoices within a reasonable period, normally 30 days, following submission and shall be obligated to pay the AGENCY that amount determined by WVDOT to be eligible for payment by WVDOT; or, if the invoice is not acceptable, WVDOT shall promptly provide the AGENCY a clear statement regarding its ineligibility, or the deficiencies to be eliminated prior to acceptance and processing.

In no instance shall reimbursement payments for the cost of the work to be performed exceed the maximum cost shown in the approved WORK PROGRAM and budget without prior approval of WVDOT. Any expenditure in excess of the budget, without prior written approval from WVDOT, will be the exclusive responsibility of the AGENCY.

No expenditure shall be included in the cost of the work performed and no part of any funds reimbursed to the AGENCY shall be used by the AGENCY for expenditures or charges that are (1) contrary to the provisions of this Agreement, (2) not directly related to the work performed, or (3) incurred without the consent of WVDOT after written notice or the suspension or termination of any or all of the AGENCY's obligation under this Agreement.

In the event that funding generally made available to WVDOT by the U.S. DOT is limited either in scope or magnitude, WVDOT reserves the right to mutually negotiate with the AGENCY, a revision to this Agreement as an alternative to termination.

SECTION VIII: AUDIT

The AGENCY shall have an audit performed on an annual basis in accordance with the U.S. Office of Management and Budget Circular A-133 and WVDOT's Guidelines, as each may be

modified, and any other applicable regulation. Completion or termination of this Agreement shall not alter this obligation.

SECTION IX: INSPECTION OF WORK

As often as deemed necessary by WVDOT, or U.S. DOT, the AGENCY shall permit WVDOT, or U.S. DOT, or both, or any of their duly authorized representatives, upon reasonable notice, provide proper facilities for the review and inspection of the work performed under this Agreement and any records in support of the work performed. This will include provision for office space for WVDOT's representative. The AGENCY shall include in all its subcontracts under this Agreement a provision that WVDOT, U.S. DOT, or any of their duly authorized representatives, shall have full access to and the right to examine any pertinent books, documents, papers, and records of any contractor involving transactions related to this Agreement for three years from the final payment under this Agreement.

SECTION X: PERSONNEL

The AGENCY represents that it has, or will secure, all personnel required to perform the services under this Agreement. The AGENCY shall submit to WVDOT a listing of such personnel, salary ranges, and man-hours allocated to each Work Element in the approved WORK PROGRAM and budget to WVDOT. All services required in the approved WORK PROGRAM will be performed by the AGENCY or by its subcontractors. None of the AGENCY's personnel or any of its subcontractors may be employees of WVDOT.

SECTION XI: REPORTS, INFORMATION, AND RIGHTS IN DATA

The AGENCY's progress in completing the WORK PROGRAM will be monitored through semiannual AGENCY Progress Reports. Each Progress Report shall include a narrative description and financial expenditure summary, for each Work Element in the approved WORK PROGRAM and budget. WVDOT and U.S. DOT will review the Progress Reports to assure the AGENCY is making satisfactory progress toward meeting the WORK PROGRAM commitments to justify reimbursement payments. If the Progress Reports demonstrate the AGENCY is not satisfactorily advancing a WORK PROGRAM product or activity, WVDOT will notify the AGENCY in writing and work with the AGENCY to identify corrective actions. The Agency will have one month from the date of WVDOT's written notification to begin good faith efforts to correct the deficiency. Whenever WVDOT and the AGENCY are unable to agree on corrective actions and the situation is such, in the opinion of WVDOT, that it indicates there has been gross malfeasance, misfeasance, or nonfeasance by the AGENCY, WVDOT may withhold funds until the AGENCY takes corrective actions.

Publication of reports is limited to those shown in the approved WORK PROGRAM unless otherwise authorized by WVDOT or U.S. DOT and only after satisfactory resolution of all comments made by WVDOT or U.S. DOT. Acknowledgment of the cooperative effort of appropriate parties shall be made in each report; for example "Prepared in cooperation with the U.S. Department of Transportation's Federal Highway Administration and Federal Transit Administration, the West Virginia Department of Transportation, and local communities."

A disclaimer statement, where appropriate and requested by WVDOT shall also be included; for

example "The contents of this report reflect the views of the AGENCY/author, which is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official view and policies of WVDOT and/or the U.S. Department of Transportation. This report does not constitute a standard specification or regulation."

The foregoing limitations are not applicable to dissemination of data necessary to perform a service function of the AGENCY such dissemination of data shall be made in accordance with the AGENCY's established policy contained in the approved WORK PROGRAM.

The ownership of all data, drawings, charts, etc. which are prepared or produced under this Agreement, shall be vested in the parties to this Agreement. Such drawings, data, charts, etc. shall be retained in the quarters of the producing party or parties unless the transfer to the other parties is necessary for further processing or use.

No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country, and no other property right of any kind shall arise from any activity carried out pursuant to this Agreement. It is the intention that all rights hereunder shall be irrevocably vested in WVDOT and U.S. DOT. WVDOT and U.S. DOT shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement.

The patent rights provisions of 41 CFR 1-9.1 regarding rights to inventions are made a part hereof, and incorporated by this reference as if fully rewritten herein.

SECTION XII: NON-DISCRIMINATION

To effectuate Title VI of the Civil Rights Act of 1964, the following notice to contractor's compliance with Title VI of the Civil Rights Act of 1964 for federal aid contracts applies.

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

1. Compliance with Regulations: The AGENCY will comply with the regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Commerce, Title 49, Code of Federal Regulations, Part 21, (REGULATIONS), which are made a part hereof, and incorporated by this reference as if fully rewritten herein.
2. Nondiscrimination: The AGENCY, with regard to the work performed by it after the award of this contract work and prior to its completion, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The AGENCY will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the REGULATIONS, including employment practices when the contract covers the program set forth in Appendix A-11 of the REGULATIONS.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competition or negotiation, made by the AGENCY for work to be

- performed under a contract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the AGENCY of the AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The AGENCY will provide all information and reports required by the REGULATIONS, or any orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by WVDOT, the FHWA, or FTA to be pertinent to ascertain compliance with such REGULATIONS, orders, and instructions. Where any information required of an AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, the AGENCY shall certify to WVDOT, FHWA, or FTA, as appropriate such fact about another's possession of information, and such certification shall set forth what efforts the AGENCY has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the AGENCY's noncompliance with the nondiscrimination provisions of this contract, WVDOT shall impose such contract sanctions as WVDOT, the FHWA, or FTA may determine to be appropriate, including but not limited to:
- a. Withholding any payments to the AGENCY under the agreement until the AGENCY complies, and/or
 - b. Cancellation, termination, or suspension of the agreement in whole or in part.
6. Incorporation of Provisions: The AGENCY shall include the provision of the five preceding paragraphs in every subcontract including procurement of materials and leases of equipment unless exempt by the REGULATIONS, orders or instructions issued pursuant thereto. The AGENCY will take such action with respect to any subcontracts or procurement as WVDOT, the FHWA or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the AGENCY becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request WVDOT to enter such litigation to protect the interest of WVDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

SECTION XIII: DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR 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. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

The AGENCY agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum 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 or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that minority business enterprises have the maximum opportunity to compete for

and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts.

SECTION XIV: RESTRICTION OF GIFTS

The AGENCY, its officers, representatives, agents, subcontractors or employees agree not to give any gift of money or other thing of value, or gratuity in any form whatsoever to any employee of WVDOT or the U.S. DOT, or any of their respective agents, representatives, or relatives.

SECTION XV: PROHIBITED INTEREST

No member, officer, or employee of WVDOT shall have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION XVI: INTEREST OF MEMBERS OF CONGRESS

No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

SECTION XVII: DRUG-FREE WORKPLACE

The AGENCY agrees to comply with all applicable state and federal laws regarding drug-free workplace. The AGENCY shall make a good faith effort to ensure that all AGENCY employees, while working will not purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

SECTION XVIII: CONDUCT, ETHICS AND INTEGRITY

The AGENCY is prohibited from engaging in activities which may create, or be perceived to create, conflicts of interest, either real or apparent, in compliance with all federal and state ethics laws. The AGENCY must not have engaged, or be engaged currently in behavior which has threatened or potentially threatens the integrity of federally-assisted and administered programs. Further, the AGENCY, certifies by its signature hereto that to the best of its knowledge, information, and belief, that it will not engage, or otherwise employ or utilize or award contracts to contractors that, or have principals who:

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State of West Virginia department or agency;
2. Within a three year period immediately preceding the date on which this Agreement was executed have been convicted of or had a civil judgement against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

3. Are presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the offenses enumerated in paragraph 2 above; or
4. Within a three year period immediately preceding the date on which this Agreement was executed have had one or more public transactions terminated for cause or default. The AGENCY certifies or affirms the truthfulness and accuracy of the contents of the statements submitted by this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq., are applicable thereto.

SECTION XIX: RESTRICTIONS ON LOBBYING

The AGENCY agrees to comply with the provisions of 31 U.S.C. Section 1352, which prohibit the use of federal funds to lobby any official or employee of any federal agency, or member or employee of Congress; and to disclose any lobbying activities in connection with federal funds.

The AGENCY certifies by its signature hereto that:

1. No funds appropriated by the United States have been paid or will be paid by or on behalf of the AGENCY, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with awarding of any federal contract, making any federal grant, making any federal loan, entering into any cooperative agreement, and extending, continuing, renewing, amending or modifying of any federal contract, grant, loan or cooperative agreement.
2. If funds, other than those appropriated by the United States, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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 AGENCY shall complete and submit Standard Form "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The AGENCY shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance will be placed when this Agreement is made or entered into. The AGENCY's certification is a prerequisite, imposed by 31 U.S.C. Section 1352, for making or entering into this Agreement. Any agency that 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.

SECTION XX: SAVE HARMLESS

The AGENCY shall save WVDOT and all other governmental agencies absolutely harmless against all claims and liabilities arising from any acts or omissions of the AGENCY or its contractors, subcontractors, agents, or employees.

SECTION XXI: DISPUTES

The AGENCY agrees that all disputes concerning questions of fact in connection with the work and not otherwise disposed of by the specific terms of this Agreement or by mutual agreement among the parties hereto shall be resolved as follows:

The AGENCY shall notify WVDOT in writing within 60 days following any determination by WVDOT, which in the estimation of the AGENCY is in material conflict with facts concerning the subject matter. In such notification, the AGENCY shall present evidentiary matters as may support the AGENCY's position and shall request a review of said previous determination. Within a reasonable period of time, WVDOT shall cause the circumstances and facts be reappraised for the purposes of re-determination.

The AGENCY hereby agrees that WVDOT will decide such questions which may arise including, for example, the quality or acceptability of materials furnished and work performed, the rate of progress of the work, the acceptable fulfillment of the agreement on the part of the AGENCY, matters concerning compensation, and all other matters in dispute relating to facts in connection with this Agreement and the services or work to be performed thereunder.

SECTION XXII: COMPLIANCE WITH LAWS AND PERMITS

The AGENCY shall give all notices and comply with all existing and future federal, state and municipal laws, ordinances, rules regulations, and orders of any public authority bearing on the performance of this Agreement, including but not limited to, the laws referred to in these provisions of this Agreement and the other documents. If the agreement documents are at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the AGENCY shall furnish to WVDOT certificates of compliance with all such laws, orders, and regulations.

SECTION XXIII: COUNTERPARTS

This Agreement may be executed in more than one (1) counterpart, and each counterpart shall be deemed and considered an original instrument for any and all purposes.

SECTION XXIV: CHANGE OR MODIFICATION

This Agreement constitutes the entire agreement and contract between the contracting parties, and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures by their respective officers or officials.

Attest:


Morgantown / Monongalia County
Transportation Planning Organization



Attest:

West Virginia Department of Transportation


Executive Assistant to
Deputy Commissioner
DEPUTY SECRETARY / DEPUTY
COMMISSIONER

APPROVED AS TO FORM THIS
3rd DAY OF July 2003

ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS