

## **MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT, is made by and between the DURHAM-CHAPEL HILL-CARRBORO METROPOLITAN PLANNING ORGANIZATION (hereinafter, "MPO"), the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter, "NCDOT"), the NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter, "NCDEQ"), the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (hereinafter, "USEPA"), the FEDERAL HIGHWAY ADMINISTRATION (hereinafter, "FHWA"), the FEDERAL TRANSIT ADMINISTRATION (hereinafter, "FTA"), and collectively referred to hereinafter as the Parties.

### **RECITALS**

WHEREAS, the Parties enter into this Memorandum of Agreement (hereinafter, "MOA" or "Agreement") for the purpose of implementing interagency consultation procedures for developing a State Implementation Plan (hereinafter, "SIP") and/or revisions, regional emissions budget comparisons and conformity determinations of Metropolitan Transportation Plans (hereinafter, "MTP"), Metropolitan Transportation Improvement Programs (hereinafter, "TIPs"), and Regionally Significant Projects (hereinafter, "RSP");

WHEREAS, the Parties enter into this Agreement in accordance with Section 176(c)(4)(E) of the Clean Air Act (hereinafter, "CAA"), as amended (42 USC 7401 et seq.) with respect to the conformity of MTPs, TIPs and FHWA/FTA projects, which are developed, funded or approved by the United States Department of Transportation (hereinafter, "USDOT") and by the MPO or other recipients of funds under Title 23 USC, or the Federal Transit Act (49 USC Chapter 53), and Title 15A North Carolina Administrative Code (hereinafter, "NCAC"), Subchapter 02D, Section .2000, relating to nonattainment and maintenance areas;

WHEREAS, the MPO desires to comply with the aforementioned federal laws and regulations and parallel state and local laws and regulations by preparing, modifying and evaluating MTPs and TIPs (which may include RSPs) in accordance with the SIP and in order to preserve the integrity of the SIP;

WHEREAS, NCDOT desires to comply with the aforementioned federal laws and regulations and parallel state and local laws and regulations by assisting the MPO in its conformity determination in accordance with the State Transportation Plan and State Transportation Improvement Program (hereinafter, "STIP") and in order to preserve the integrity of the SIP;

WHEREAS, NCDEQ desires to assist the MPO in its compliance with the aforementioned federal requirements and must enforce applicable state environmental laws and regulations regarding air quality;

WHEREAS, USEPA desires to effectively enforce the relevant federal laws and regulations regarding air quality and compliance with SIP requirements;

WHEREAS, FHWA desires to effectively enforce and administer the relevant aforementioned federal laws and regulations regarding metropolitan and statewide transportation planning and transportation conformity;

WHEREAS, FTA desires to effectively enforce and administer the relevant aforementioned federal laws and regulations regarding metropolitan and statewide transportation planning and transportation conformity; and

WHEREAS, the Parties wish to work together to perform the duties imposed upon them by law and to coordinate among themselves for efficient and thorough planning for air quality in the geographic area included within the MPO.

THEREFORE, in consideration of these conditions and for good and valuable consideration and the benefits flowing to the Parties from each other, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Parties hereby agree as follows:

## **PURPOSE**

The purpose of this MOA is to satisfy the requirement in CAA Section 176(c)(4)(E) to create a state conformity SIP containing the following three requirements of the Federal Transportation Conformity Rule, 40 CFR Part 93, Subpart A: (1) 40 CFR 93.105, which addresses consultation procedures; (2) 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require written commitments to control measures to be obtained prior to a conformity determination if the control measures are not included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and (3) 40 CFR 93.125(c), which states that conformity SIPs must require written commitments to mitigation measures to be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

## **1.0 DEFINITIONS**

- 1.1** "Conformity" -- refers to the status of transportation plans, programs and projects within a region designated as nonattainment or maintenance for transportation-related pollutants, as to whether they comply with air emission levels and standards required by existing state and/or federal implementation plans for that region.
- 1.2** "Consultation" -- means when one Party confers with another identified Party, prior to any final decision, provides all information necessary to that Party needed for meaningful input, and considers and responds to the views of that Party in a timely and written manner.
- 1.3** "Interagency Consultation Conformity Determination Meeting" -- refers to a meeting called by the MPO or its designee and open to all Parties, designed to establish agreed upon procedures, protocols, and schedules for conducting a conformity analysis and determination.
- 1.4** "Metropolitan Transportation Plan" (MTP) -- means the official multimodal transportation plan addressing no less than a 20-year planning horizon that the MPO develops, adopts, and updates through the metropolitan transportation process.

- 1.5** "Transportation Improvement Program" (TIP) -- means a prioritized listing/program of transportation projects that are developed and formally adopted by the MPO as part of the metropolitan planning process, consistent with the MTP pursuant to 23 CFR, Part 450, and required for projects to be eligible for funding pursuant to Title 23 USC and 49 USC Chapter 53.
- 1.6** "State Implementation Plan" (SIP) -- means documents, including, but not limited to, State adopted regulations, attainment demonstrations, and maintenance plans, submitted by North Carolina to, and approved by, the USEPA, or the most recent revision thereof, in accordance with Sections 110, 301(d), and 175(A) of the CAA (42 USC 7410, 7601, and 7505(a)) and regulations promulgated by USEPA pursuant to the provisions of those Sections.
- 1.7** "Statewide Interagency Consultation Meetings" (SICM) -- refers to regularly scheduled informational meetings, sponsored by NCDEQ to which all Parties are invited, including all MPOs and Regional Planning Organizations throughout the State, which are required to have air quality conformity determinations pursuant to Title 15A NCAC Subchapter 02D, Section .2000.
- 1.8** "Statewide Transportation Improvement Program" (STIP) -- means a statewide prioritized listing/program of transportation projects that is consistent with the long-range statewide transportation plan, the MTP, TIPs, and required for projects to be eligible for funding pursuant to Title 23 USC and Title 49 USC Chapter 53.
- 1.9** "Timely" -- means within the timeframe agreed to in the schedule set at the Interagency Consultation Conformity Determination Meeting(s).
- 1.10** "Transportation Providers" -- means public agencies that provide transportation services to the public, these agencies are publicly owned and operated.
- 1.11** "Parties" -- means representatives from all signatory agencies to this Agreement.
- 1.12** "Transportation Control Measures" (TCMs) -- are strategies that are specifically identified and committed to in SIPs; and are either listed in Section 108 of the CAA, or will reduce transportation-related emissions by reducing vehicle use or improving traffic flow.
- 1.13** All other terms used herein but not defined in this Agreement shall have the meaning given to them by the CAA, Title 23 and 49 USC 40 CFR 93.101, other USEPA regulations, other USDOT regulations, or 15A NCAC 02D.

## **2.0 DUTIES OF THE PARTIES**

The roles and responsibilities of each Party are defined below:

- 2.0.1 Each Party member shall determine which staff members will represent the Party in the conformity process and shall take responsibility to see that the appropriate representatives are available to ensure a cooperative process and adequate communication among the Parties. Each Party shall choose its representative(s) and at least one alternate staff person for interagency consultation and provide their names and contact information to NCDEQ. It is the responsibility of each Party to notify NCDEQ of changes in their appointed designee(s) or contact(s).
- 2.0.2 All Parties shall review and provide comments to the MPO on draft MTPs, TIPs, and conformity analyses. All Parties shall review and provide comments to NCDEQ on draft SIP submissions. All Parties shall review and provide comments to NCDOT and/or local project sponsors on project-level conformity determination prepared during the National Environmental Policy Act (NEPA) process for FHWA/FTA projects located in the MPO jurisdiction. Parties shall provide their written review comments, if any, to these agencies within twenty-one (21) days of receipt of draft documents unless an alternate deadline has been agreed upon at an interagency consultation meeting. The MPO, NCDEQ, or NCDOT, as appropriate, shall respond in writing to all Parties to explain how comments were addressed or why they were not addressed in the subsequent version of the document that is distributed to all Parties.

### **2.1 MPO DUTIES**

- 2.1.1 The MPO, or its designee, shall sponsor the Interagency Consultation Conformity Determination Meetings and prepare meeting agendas and meeting materials required for fulfillment of consultation procedures outlined in this Agreement. Any adjacent MPO will be invited to this meeting for purposes of coordination and consultation.
- 2.1.2 The MPO, or its designee, shall prepare meeting summaries and conclusions of said Interagency Consultation Conformity Determination Meetings and other appropriate meetings it sponsors. The MPO, or its designee, shall provide meeting summaries and conclusions to all Parties within a timely manner not to exceed fourteen (14) days after the meeting. The other Parties may provide comments on meeting summaries/conclusions to the MPO within a timely manner not to exceed fourteen (14) days, copying other Parties. The MPO, or its designee, shall respond to comments from Parties in writing in a timely manner not to exceed fourteen (14) days of receiving comments. The MPO's response to comments shall be distributed to all Parties.
- 2.1.3 The MPO shall consult with the Parties on the development process for MTPs, TIPs, and amendments thereto. This process will begin no later than one year prior to when the conformity determination is needed.

- 2.1.4 Notification of the MTP and TIP revisions and amendments that add or delete non-exempt projects.
- 2.1.5 Before the MPO conducts conformity analyses and determinations, as initiated under the terms and conditions of this Agreement, the MPO, or its designee, shall initiate and facilitate an Interagency Consultation Conformity Determination Meeting with all Parties on proposed procedures and protocol for conducting and performing conformity analysis prior to making a conformity determination. This meeting will take place preferably one year prior to, but no less than 9 months before the determination is needed.
- 2.1.6 The MPO, NCDOT, or its designee, shall conduct project-level conformity analysis for MPO-sponsored projects as part of the NEPA process for FHWA/FTA projects located in the MPO boundary. The MPO does not have to make project-level conformity determinations.
- 2.1.7 The MPO, or its designee, shall provide information requested by other Parties to track the implementation of TCMs funded by the MPO, or local municipalities, and included in the SIP by the dates agreed to in the Interagency Consultation Conformity Determination Meeting.
- 2.1.8 The MPO shall be responsible for development and maintenance of the travel demand model for the MPO area in consultation with the Parties. The MPO may delegate such responsibility to a third party through an agreement with NCDOT and/or neighboring MPOs and associated transportation agencies to develop a regional travel demand model. Any Party delegating responsibility to a third party shall notify the third party, in writing, that all documentation is subject to the applicable public records law. Responsibility for development and maintenance of a regional travel demand model should be established through a separate memorandum of agreement between the affected MPOs, NCDOT, and associated transportation agencies.
- 2.1.9 Upon written request by the Parties, the MPO, or its designee, shall provide all Parties with available travel data needed to determine various transportation emissions budgets, if they are responsible for this data.
- 2.1.10 The MPO, or its designee, shall assist NCDEQ and NCDOT as needed for modifications or revisions to the SIP, which includes the assessment of effectiveness of existing TCMs and implementation of potential TCMs for inclusion in the SIP, and providing critical input to the SIP development process, such as vehicle miles traveled (VMT) and speed assumptions for various road classifications.

- 2.1.11 The MPO, or its designee, shall submit concurrently, upon completion, a draft and/or final MTP and/or TIP document and related conformity determination to the NCDOT, NCDEQ, and FHWA. FHWA will coordinate the federal review effort and will forward the documents to FTA and USEPA unless an alternate coordination process is specified through interagency consultation. The MPO shall respond in writing to comments made by the other Parties on draft documents.
- 2.1.12 The MPO shall maintain procedures for public involvement in the conformity determination process consistent with its adopted Public Involvement Procedures including receiving and responding to public input on conformity findings, consistent with 23 CFR 450.316(a) and 40 CFR 93.105(e).
- 2.1.13 The MPO, or its designee, shall submit a written request for emissions modeling results required for conformity determinations to NCDEQ or its designee, and shall provide vehicle speed, VMT, and other data necessary to generate the emissions modeling results.
- 2.1.14 Enforceability of design concept and scope and project-level mitigation and control measures.
  - 2.1.14.1 Prior to making a conformity determination on the MTP and/or TIP, the MPO will ensure any project-level mitigation or control measures are included in the project design concept and scope and are appropriately identified in the regional emissions analysis used in the conformity analysis.
  - 2.1.14.2 The MPO shall fulfill commitments made for mitigation measures that were required for facilitating positive conformity determinations.
  - 2.1.14.3 Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors and/or operators must comply with the agreed upon commitment obligations (in accordance with 40 CFR 93.122(a)(4)(ii)).

## **2.2 NCDEQ DUTIES**

- 2.2.1 NCDEQ shall maintain a list of current interagency consultation members and distribute it to all members whenever a change in membership occurs.
- 2.2.2 NCDEQ shall participate in the Interagency Consultation Conformity Determination Meetings, sponsor the SICM meeting, and other appropriate committees/meetings established to advise the Parties on SIP and emissions control strategies and programs particularly as these relate to transportation issues.

- 2.2.3 NCDEQ shall participate in consultations with the Parties regarding the development process for MTPs, TIPs, and amendments thereto.
- 2.2.4 NCDEQ shall participate in the development and review of transportation system and emissions modeling activities and projection procedures to ensure consistency of air quality and transportation system evaluations.
- 2.2.5 NCDEQ shall ensure the SIP is developed using appropriate emissions and control measures. NCDEQ is to develop the applicable motor vehicle emissions budgets in consultation with the Parties to ensure that accurate and up-to-date data assumptions are being used at the initial phases of the development of the SIP by the deadline established by NCDEQ during the consultation process. NCDEQ shall update the SIP consistent with federal CAA requirements.
- 2.2.6 NCDEQ shall provide applicable transportation-related emission budgets and revisions to the NCDOT, MPO, and USDOT (FHWA and FTA).
- 2.2.7 NCDEQ shall keep the Parties apprised of its SIP revision submittals and USEPA's approval thereof and provide for and respond in writing to comments made by the MPO and NCDOT and the other Parties in transportation-related SIP development processes.
- 2.2.8 NCDEQ shall obtain MPO and NCDOT approval for the inclusion of transportation-related TCMs (for any TCM funded by the federal and state transportation budgets or local funds and where the implementing agency is the MPO) in the SIP.
- 2.2.9 NCDEQ shall provide a list of TCMs included in the SIP as well as their SIP implementation schedules at the Interagency Consultation Conformity Determination Meeting.
- 2.2.10 Upon initiating a modification or revision to the SIP, NCDEQ shall consult with NCDOT and the MPO, which will include the assessment of effectiveness of existing TCMs and implementation of potential TCMs for inclusion in the SIP. Additionally, NCDEQ will consult with NCDOT and the MPO about what critical transportation-related inputs for the SIP development process should be used, such as VMT and speed assumptions for various road classifications. A draft version of the SIP will be shared with the Parties, at a minimum, thirty (30) days prior to the end of the public comment period.
- 2.2.11 NCDEQ shall consult and review project narratives provided by NCDOT or appropriate project sponsor to determine if the project is an air quality concern pursuant to 40 CFR, Part 93.

- 2.2.12 NCDEQ at the written request of NCDOT or the MPO, shall provide appropriate emissions modeling results to NCDOT or the MPO for completion of the conformity analysis. NCDEQ shall provide a schedule for completion of work within two (2) business days of the written request. NCDEQ shall consult with NCDOT and/or the MPO for the availability and appropriate use of local data in the latest USEPA-approved emissions model.
- 2.2.13 NCDEQ shall review and provide comments to the MPO on draft conformity analyses. NCDEQ shall provide timely review comments to the MPO within twenty-one (21) days of receipt for inclusion in the final report in accordance with the terms and conditions of this Agreement.

### **2.3 NCDOT DUTIES**

- 2.3.1 NCDOT shall participate in the SICM, Interagency Consultation Conformity Determination Meeting(s), and other appropriate committees/meetings established to discuss with the Parties on the development of a revised statewide transportation plan, including programs and projects.
- 2.3.2 NCDOT shall consult with the Parties to develop the STIP and amendments thereto. Furthermore, NCDOT shall keep the Parties apprised of the status and content of statewide transportation plans and the STIP.
- 2.3.3 NCDOT shall consult with the Parties to develop MTPs, TIPs, and amendments thereto by the dates agreed to in the Interagency Consultation Conformity Determination Meeting.
- 2.3.4 NCDOT shall participate in the development and review of transportation system emissions modeling activities and projection procedures to ensure consistency of air quality and transportation system evaluations.
- 2.3.5 NCDOT shall review and provide comments to the MPO on draft conformity analyses by the dates agreed upon in the Interagency Consultation Conformity Determination Meeting unless NCDOT has authored said conformity analysis report.
- 2.3.6 NCDOT shall also provide information requested by other Parties to track the implementation of TCMs included in the SIP by the dates agreed to in the Interagency Consultation Conformity Determination Meeting.
- 2.3.7 NCDOT shall assist NCDEQ and the MPOs as needed for modifications or revisions to the SIP, which will include the assessment of effectiveness of existing TCMs and implementation of potential TCMs for inclusion in the SIP.



- 2.3.8 NCDOT shall conduct project level conformity analysis for NCDOT sponsored projects as part of the NEPA process for FHWA/FTA projects located in the MPO boundary.
- 2.3.9 Enforceability of design concept and scope and project-level mitigation and control measures.
  - 2.3.9.1 The NCDOT shall obtain written commitments from the project sponsor and/or operator to fulfill and complete all of the projects and operations identified by the project-level NEPA mitigation or control measures with respect to local hot-spot analysis.
  - 2.3.9.2 The NCDOT shall fulfill commitments made for mitigation measures that were required for facilitating positive conformity determinations.
  - 2.3.9.3 Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors and/or operators must comply with the agreed upon commitment obligations.

#### **2.4 FHWA and FTA (USDOT) DUTIES**

- 2.4.1 FHWA and FTA shall consult with the Parties regarding the SICM, the Interagency Consultation Conformity Determination Meetings, and other appropriate committees/meetings established to advise the Parties on the development of transportation plans, programs, and projects, particularly as these relate to air quality-related issues.
- 2.4.2 FHWA and FTA shall advise the Parties of changes to USDOT technical, regulatory, and policy guidance as it relates to the planning process and conformity.
- 2.4.3 FHWA and FTA shall assist NCDEQ, NCDOT, and the MPOs as needed for modifications or revisions to the SIP, which will include the assessment of effectiveness of existing TCMs and implementation of potential TCMs for inclusion in the SIP.
- 2.4.4 FHWA and FTA shall assess the MPO's compliance with public participation policy and procedures that meet the requirements of 23 CFR 450.316(a) and 40 CFR 93.105(e).
- 2.4.5 FHWA and FTA shall provide written comments to the other Parties concerning both draft and final conformity findings in accordance with the terms of this Agreement. The final conformity finding made by FHWA shall be consistent with the requirements of the national conformity memorandum of understanding.

- 2.4.6 FHWA shall review and provide timely approval or rejection, in writing, of the final conformity determination report by the MPO of an amended and/or adopted transportation plan, program, or project subject to conformity analysis and determination according to this Agreement by the dates agreed to in the Interagency Consultation Conformity Determination Meetings.
- 2.4.7 The FHWA will coordinate the federal review effort and will forward copies of the draft or final MTP and/or TIP document and related conformity determination to the FTA and USEPA unless an alternate coordination process is specified through interagency consultation.
- 2.4.8 In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA must obtain from the project sponsor and/or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities.
- 2.4.9 FHWA shall be responsible for final approval or rejection of project-level conformity determinations on FHWA projects.

## **2.5 USEPA DUTIES**

- 2.5.1 USEPA shall participate in the SICM, the Interagency Consultation Conformity Determination Meetings, and other appropriate committees/meetings established to advise the Parties on the development of transportation plans, programs, and projects, particularly as these relate to air quality-related issues.
- 2.5.2 USEPA shall, in a timely fashion, advise the Parties of changes to USEPA policy, regulation, and guidance related to air quality and conformity.
- 2.5.3 USEPA shall review and comment, in writing to FHWA and the MPO, on draft and final conformity analyses in accordance with the terms of this Agreement and consistent with the requirements of the national conformity memorandum of understanding within twenty-one (21) days of receipt.
- 2.5.4 USEPA shall assist NCDEQ, NCDOT, and the MPOs as needed for modifications or revisions to the SIP, which will include the assessment of effectiveness of existing TCMs and implementation of potential TCMs for inclusion in the SIP.

- 2.5.5 USEPA shall review the adequacy of the motor vehicle emissions budgets, and determine the approvability determination of submitted SIPs, including the Conformity SIP (the subject of this MOA) and any subsequent revisions, and of control strategy SIPs and any revisions. USEPA's determination of approvability shall be published in the Federal Register.
- 2.5.6 USEPA shall be consulted with and will review compliance for hotspot requirements related to individual FHWA/FTA projects and provide comment in writing.

### **3.0 CONTENT AND SUBMISSION OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS**

#### **3.1 CONTENT AND DESIGN**

The MTP/TIP, programs, and/or projects to be analyzed for conformity shall meet the requirements of the current federal transportation authorizing legislation, and the most current USDOT and USEPA regulations. At the time that a new or revised transportation plan is proposed, the MPO, in cooperation with NCDOT and local transportation planning agencies, shall prepare a list of new or modified transportation projects and services included in the transportation plan and identify the time frame each new project or service is expected to become operational.

#### **3.2 PUBLIC PARTICIPATION**

Conformity determinations for MTP and TIPs shall follow the specific public involvement process established by the MPO, consistent with the requirements of 23 CFR, Part 450, which provides opportunity for public review and comment prior to formal action on a conformity determination. The public review must provide reasonable public access to technical and policy information considered by the affected parties in making the conformity determination.

Conformity determinations in rural portions of nonattainment and maintenance areas outside and adjacent to the MPO boundaries shall follow the specific public involvement process established by NCDOT, consistent with the requirements of 23 CFR, Part 450, which provides opportunity for public review and comment prior to formal action to update the STIP.

Any charges imposed for public review and copying should be consistent with applicable fee schedules including but not limited to 49 CFR 7.43 and North Carolina General Statute 132-6.2.

### **4.0 STATEWIDE INTERAGENCY CONSULTATION MEETINGS**

NCDEQ shall sponsor a SICM meeting on a regular basis for the purpose of keeping all Parties and all MPOs abreast of new information concerning transportation planning generally and as it relates to conformity analysis and determination.

#### **4.1 MEETING FREQUENCY**

SICM shall be held monthly unless otherwise agreed upon by all Parties. Meeting dates shall be determined by NCDEQ after consultation with the Parties. The meeting shall consist of updates and other pertinent information provided by each Party.

#### **4.2 SPECIAL MEETINGS**

If NCDEQ determines, in consultation with other Parties, a need for an unscheduled SICM meeting and there is a consensus among the Parties to have an unscheduled meeting, NCDEQ must provide prior notice to all Parties, at least fourteen (14) days in advance of the meeting. However, the Parties may waive the fourteen (14) day advance notice requirement if all Parties agree that an earlier scheduled meeting is in the best interest of the Parties.

#### **4.3 MEETING LOCATION AND AGENDA**

The SICM meeting location shall be determined based upon convenience and agreement by the Parties. NCDEQ shall provide all Parties, including all Statewide MPOs, advanced notice of the meeting time, location, and agenda. If necessary and convenient, the SICM meeting need not be a face-to-face meeting but may occur by telephone, video, or some other practical electronic means.

#### **4.4 DISCUSSION OF SIP-RELATED ISSUES**

NCDEQ shall use the SICM meeting as an opportunity to update the Parties on SIPs under development and SIP revisions submitted to USEPA. NCDEQ shall allow the Parties to review and comment on transportation-related SIP issues and respond to said comments. See Section 2.0.2 for the general process for commenting and responding to comments.

### **5.0 INITIATING CONFORMITY DETERMINATIONS OR ANALYSIS**

The Parties shall make conformity determinations and consultations consistent with this Agreement and in accordance with the conditions described in 40 CFR, Part 93 for MTPs, TIPs, and FHWA/FTA projects.

#### **5.1 EXEMPTIONS TO CONFORMITY DETERMINATIONS**

- 5.1.1 Notification of Exempt Status Required --The MPO shall notify the Parties of adoption or approval of projects determined to be exempt by the MPO and provide a basis for such exempt status. Notification by the MPO shall also be made when the MTP or TIP is revised to add or delete exempt projects as defined in 40 CFR 93.126, 93.127, and 93.128. Notification of deleted projects does not have to be made prior to an MPO action.
- 5.1.2 Objection to Exempt Determination -- If the Parties disagree with the MPO's finding that the amendment to the MTP or TIP contains only exempt projects, the objecting Party shall notify all Parties in writing. See Section 9.0 for conflict resolution procedures.

## **6.0 INTERAGENCY CONSULTATION CONFORMITY DETERMINATION MEETING**

When the need for conformity analysis and determination is initiated in accordance with this Agreement and aforementioned regulations, the MPO, or its designee, shall call an Interagency Consultation Conformity Determination Meeting to which all Parties of this Agreement shall be invited by the MPO, or its designee. The Interagency Consultation Conformity Determination Meeting shall be held prior to performing any conformity analysis or determination and shall address the specific processes outlined in 40 CFR 93.105(c). The purpose is to coordinate early with the Parties on information regarding the choice of some major parameters of the conformity analysis and to determine the schedule of preparation and review of the analysis. All of the information agreed upon by the Parties will be documented in the pre-analysis plan. If during the meeting a conflict arises, the Parties shall follow the conflict resolution procedures as outlined in Section 9.0 of this document.

### **6.1 NOTICE OF MEETING**

The MPO, or its designee, shall provide at least fourteen (14) days prior written notice to the Parties that an Interagency Consultation Conformity Determination Meeting has been scheduled. Said prior notice shall also be given to local transportation providers represented by the MPO. However, the Parties may waive the fourteen (14) day advance notice requirement if all Parties agree that an earlier scheduled meeting is in the best interest of the Parties.

### **6.2 MEETING PLACE, TIME AND AGENDA**

The meeting shall be scheduled at a time and location that allows representatives from the Parties to participate. The MPO, or its designee, shall distribute to the Parties draft agenda and meeting materials at least five (5) business days prior to the meeting. The Parties shall have the opportunity to add agenda items and will be responsible for presenting them. If it is agreed among the Parties that additional meetings are required the MPO, or its designee, may schedule such additional meetings.

Attendance at the Interagency Consultation Conformity Determination Meeting may be by telephone or teleconference so long as all the Parties agree. If some Parties are unable to attend the Interagency Consultation Conformity Determination Meeting(s), the MPO or its designee shall consider whether meaningful consensus can be reached with the available Parties. If the MPO or its designee determines the overall Party representation to be adequate, it shall document the meeting and provide all Parties with a summary of the important discussions and conclusions.

### 6.3 CONSULTATION ON CONFORMITY ANALYSIS APPROACH

The MPO, or its designee, shall outline, in the pre-analysis plan, the proposed methodologies to be used in the conformity analysis and share the pre-analysis plan with the Parties for comment at least seven (7) days prior to the meeting unless otherwise agreed upon by all Parties.

- 6.3.1 Interagency Consultation Procedures -- The issues listed in 40 CFR 93.105(c) shall be reviewed and discussed at this meeting, including but not limited to, the following activities:
- 6.3.1.1 Evaluating and choosing an appropriate model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;
  - 6.3.1.2 Determining which minor arterial and other transportation projects should be considered RSPs for the purpose of regional emissions analysis, (in addition to those functionally classified as principal arterials or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel);
  - 6.3.1.3 Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 93.127 should be treated as non-exempt in cases where potential adverse emissions impacts may exist;
  - 6.3.1.4 Discussing whether or not adopted TCMs are on schedule and performing as anticipated, as required by 40 CFR 93.113. If TCMs are not on schedule, Parties shall discuss whether 40 CFR 93.113(c)(1) can be met and what will occur if 40 CFR 93.113(c)(1) cannot be met;
  - 6.3.1.5 Choosing conformity tests and methodologies for areas outside the MPO boundary but within the nonattainment or maintenance area as required by 93.109(g)(2)(iii);
  - 6.3.1.6 Consulting on emissions analysis for transportation activities which cross MPO, nonattainment area, or air basin boundaries;
  - 6.3.1.7 For the metropolitan planning area that does not include the entire nonattainment or maintenance area, the MPO and NCDOT will work to provide cooperative planning and analysis for the purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area through interagency consultation meetings;

- 6.3.1.8 Ensuring that plans for construction of RSPs, that are not FHWA/FTA projects, are disclosed to the MPO on a regular basis and any changes to those plans disclosed in writing to the MPO;
  - 6.3.1.9 NCDOT and the MPO, or its designee, will consult on the design, schedule and funding of research and data collection efforts and regional transportation model development through interagency consultation meetings;
  - 6.3.1.10 As defined in Section 2.1.10, the MPO, or its designee will provide final documents and supporting information to each applicable Party after adoption or approval;
  - 6.3.1.11 Latest planning assumptions for developing emissions modeling results for the conformity analysis;
  - 6.3.1.12 Projects without a determined design concept and scope shall be discussed at the Interagency Consultation Conformity Determination Meeting; and
  - 6.3.1.13 Parties must agree on sufficient details of the design concept and scope for the project to be included in the conformity analysis and determination.
- 6.3.2 TCM Analysis and Implementation -- The Interagency Consultation Conformity Determination Meeting shall be used for assuring implementation of TCMs, which shall be a joint responsibility of NCDEQ, the MPO, and NCDOT. NCDEQ shall submit (at the Interagency Consultation Conformity Determination Meeting) a list of the TCMs and their implementation schedules included in the applicable SIP, to be included in the MTP or TIP.
- 6.3.3 Scheduling Implementation -- The MPO or its designee shall provide a list of transportation system elements from the most recent conforming MTP for inclusion in the current TIP to be completed in the time frame established in the MTP. NCDEQ or its designee (at the request of the MPO) shall provide the emissions modeling results to the MPO within a time agreed upon during the interagency consultations and to allow the MPO sufficient time to complete the conformity analysis on schedule. Additional meetings to address schedule changes or modifications shall be scheduled as needed. Due to the difficulty in assembling all Parties at one time, subsequent meetings may involve various subsets of the larger group. However, pertinent information discussed in these sub-meetings shall be shared with the other Parties as defined in Section 2.1.2.

- 6.3.4 TIP Conformity Analysis and Determination -- The MPO shall also discuss the TIP as it relates to conformity-related issues. If the TIP is a subset of a currently conforming MTP, the discussion of the TIP conformity analysis and determination may be made via e-mail or postal mail unless a Party member identifies sufficient reasons for including such discussions in a scheduled face-to-face meeting. If e-mail or postal mail is used, the MPO shall outline the manner in which the upcoming TIP conformity determination is to be carried out. The MPO shall inform the Parties of any proposed changes in procedure from the last TIP Conformity Analysis and Determination. The review and commenting procedures are outlined in Section 2.0.2.

## **7.0 CONFORMITY ANALYSIS RESULTS AND REPORTING**

The draft conformity analysis report shall be circulated to the Parties defined during the Interagency Consultation Conformity Determination Meeting for their review prior to releasing said draft report for public review as required by Title 15A NCAC 02D .2003. After the Parties' twenty-one (21) day review period, or review period agreed upon by all Parties, the MPO shall provide public review and comments of the draft report in accordance with the MPO's public participation policies and procedures. The MPO shall not make a conformity determination or plan adoption or approval until after the agency review is completed or the required review period has ended and after public participation.

### **7.1 DOCUMENTATION OF CONFORMITY ANALYSIS**

The conformity analysis shall document all assumptions and relevant information used to determine the impact of the MTP, TIP, or FHWA/FTA project on travel and emissions in the region.

Contents of the Regional Conformity Analysis Report --The conformity analysis report shall include, but not be limited to, the following documentation:

- 7.1.1 Forecasts of population, households, and employment in the analysis shall be either mentioned or referenced in report;
- 7.1.2 Mobile model inputs and outputs used to develop road network emissions modeling results; and
- 7.1.3 VMT and average speed for each federal functional classification.

### **7.2 COMMENTS BY THE PARTIES AND THE PUBLIC**

The Parties may comment upon the analysis results after receiving the results of the draft conformity analysis and report. The results shall also be made available to the public for review and comment in accordance with the MPO's public participation policy and procedures and 23 CFR 450.316(a) and 40 CFR 93.105(e).



- 7.2.1 Evaluation of Comments from the Public -- After the completion of the public comment period, the comments received from the public on the conformity analysis shall be addressed in the final report and may be raised in an additional meeting between the Parties. Comments may be addressed individually or in summary form at the discretion of the MPO.
- 7.2.2 Evaluation of Comments from the Parties -- If the Parties disagree with the conclusions of the analysis, the MPO shall convene a meeting or consult with the Parties via an electronic communication means (telephone, teleconference, e-mail, etc.) if agreed to by the Parties, to consider and discuss the comments and determine whether further conformity-related analysis is needed.

## **8.0 CONFORMITY DETERMINATION ADOPTED BY MPO RESOLUTION**

The MPO may make a conformity determination and approval/adoption of the MTP, TIP, RSP, or applicable transit project after addressing conformity-related objections and concerns raised by both the public and the Parties.

### **8.1 NOTIFICATION OF MPO RESOLUTION**

The MPO shall provide FHWA and NCDOT with written notification of a conformity determination by MPO resolution within the time period agreed upon during interagency consultation meetings. The MPO shall include, along with the notification, a copy of the final conformity analysis and report. FHWA will be responsible for distribution of the final conformity analysis and report to the USEPA and FTA for formal review.

### **8.2 NCDEQ OBJECTION TO CONFORMITY DETERMINATION**

If NCDEQ objects to the MPO's conformity determination, NCDEQ may appeal the MPO determination within fourteen (14) days of receiving notification of the MPO's determination. The appeal process and procedure to be followed shall be in accordance with the Conflict Resolution Section of this Agreement. Notwithstanding NCDEQ's right of appeal, NCDEQ may waive its right to object, in writing, at any time during the fourteen (14) day appeal period.

### **8.3 USDOT REJECTION OF CONFORMITY DETERMINATION**

USDOT may reject the MPO determination within forty-five (45) days of receiving notification of the MPO's determination. The MPO may appeal the rejection to the Secretary of the USDOT. If no written approval or rejection has been received from USDOT after forty-five (45) days, the Secretary of NCDOT, the Chairperson of the MPO or the Secretary of NCDEQ may provide a written request of review by the Secretary of the USDOT seeking a resolution among the FHWA and FTA. The rejection of conformity determination and appeal procedure and process shall be in accordance with the Conflict Resolution Section of this Agreement.

## 9.0 CONFLICT RESOLUTION

The purpose of this Agreement is to ensure that necessary conformity analyses and determinations are made efficiently and with limited conflict. The Parties believe this Agreement establishes a means and protocol for consultation and document review that will avoid conflicts and disagreements among the Parties regarding final conformity determinations. Nevertheless, a means must be established to address the possibility that certain conflicts may arise that cannot be resolved among the designated representatives of the Parties. It is the purpose of this Section to address such situations.

### 9.1 RESOLUTION OF CONFLICTS AT THE STATE LEVEL

9.1.1 Conflicts Arising Prior to Conformity Determination -- Any conflict or disagreement between NCDOT, NCDEQ, and the MPO causing a lack of consensus among the state Parties as to acceptance of MPO conformity analysis may be resolved in the manner described below. If NCDOT or NCDEQ objects to the proposed conformity analysis prior to the MPO making a conformity determination by resolution, the issue may be resolved by the following procedure:

9.1.1.1 **Level I Resolution** -- After the objecting Party gives five (5) days written notice to the other Party members explaining the reasons for objection, each staff level Party member shall forward written objections to the Level I Resolution Negotiators who are defined as follows:

NCDOT-- the Transportation Planning Division Director  
 NCDEQ -- the Division of Air Quality Director  
 MPO -- the Chair of Technical Coordinating Committee or his or her designee.

The Level I Resolution negotiators shall have five (5) business days, from notice, to resolve the matter by mutually agreed upon meeting forum, including, but not limited to, face-to-face meetings, telephone, and e-mail.

9.1.1.2 **Level II Resolution** -If the Level I Resolution Negotiators are unable to resolve the dispute, it may be raised to Level II Resolution negotiators who are defined as follows:

NCDOT -- The Secretary of the NCDOT  
 NCDEQ -- The Secretary of NCDEQ  
 MPO -- the Chair of the MPO or his/her designee.

The Level II Resolution Negotiators shall have ten (10) business days to resolve the matter by mutually agreed upon meeting forum, including, but not limited to face-to-face meetings, telephone, and e-mail.

9.1.2 Conflicts Arising After MPO Regional Conformity Determination -- After the MPO has made its conformity determination by resolution and adoption/approval, NCDEQ may appeal said conformity determination by resolution and adoption/approval to the Governor of North Carolina within fourteen (14) days of confirmation that NCDEQ received notice. If NCDEQ appeals to the Governor, the final conformity analysis and determination must have the concurrence of the Governor of North Carolina. NCDEQ shall provide written notice of appeal under this Subsection to the Chairperson of the MPO, the Secretary of NCDOT, the FHWA North Carolina Division Administrator, and the USEPA and FTA Region 4 Administrators. Notwithstanding NCDEQ's right of appeal, if NCDEQ supports the final conformity determination, NCDEQ may voluntarily waive its right of appeal, in writing.

9.1.2.1 **Resolution of NCDEQ Appeal** --The Governor may delegate his or her role in this appeals process to another official or agency within the State, but not to the head or staff of NCDEQ, NCDOT, MPO, the North Carolina Board of Transportation, or any agency that has responsibility for any one of these functions.

If the NCDEQ does not appeal to the Governor within fourteen (14) days of the MPO's notification of conformity on the MTP or TIP, the MPO may continue submission of its conformity determination to USDOT for their final review and conformity determination. The MPO does not have to make conformity determinations on projects.

## 9.2 RESOLUTION OF CONFLICTS AT THE FEDERAL LEVEL

It is the affirmative responsibility of FHWA and FTA to raise issues prior to the end of any agreed upon review period. If FHWA or FTA determines there is a significant issue, it is that agency's affirmative responsibility to arrange a meeting with the Parties to resolve the issue prior to writing negative comments or finding that the MTP or TIP in question does not conform to the intent of the SIP.

If, after the fourteen (14) day prior notice of the MPO's final conformity determination by resolution and approval/adoption, NCDEQ has not appealed said final conformity determination (or waived it's right to appeal earlier), FHWA and FTA may provide written approval or rejection of the final conformity determination within forty-five (45) days of notice of the final conformity determination.

9.2.1 Consensus Among Federal Agencies -- If, within the forty-five (45) day period the FHWA and FTA are in disagreement over the approval or rejection of the conformity determination, the FHWA and FTA may escalate the conflict among their respective agencies in an attempt to resolve the issue within the forty-five (45) days' time period.

- 9.2.2 Rejection by the Federal Agencies -- If the FHWA and FTA reject the conformity determination, the MPO, NCDOT, or NCDEQ may appeal said rejection to the Secretary of USDOT.
- 9.2.3 No Action after Forty-Five (45) Days -- If after forty-five (45) days, no written approval or rejection has been provided from FHWA and FTA, the Secretary of NCDOT, the Chairperson of the MPO, or the Secretary of NCDEQ may provide a written request of review by the Secretary of the USDOT seeking a resolution among the FHWA and FTA.

## **10.0 MODIFICATIONS OF AGREEMENT**

- 10.1** The Parties may propose revision(s) to this MOA, and request that Parties meet to consider such a revision. A change in duties will require this MOA to be reviewed.
- 10.2** The NCDEQ may make administrative amendments if necessary to preserve the accuracy and integrity of this MOA. The following administrative amendments shall not require the Parties to sign a new MOA:
- 10.2.1 Change information that is readily available to the public, such as when an organization or position is renamed;
- 10.2.2 Correct a citation to a referenced law or regulation when the citation has become inaccurate because of the repeal or reorganization of the cited text; or
- 10.2.3 Correct a typographical error.

If an administrative amendment is made, documentation of the change shall be submitted to each of the Parties. If no Party provides objections to the revision within twenty-one (21) days of receipt, the revised Agreement shall be adopted as final.

If a Party provides objections to the administrative amendment within twenty-one (21) days of receipt, the NCDEQ shall attempt to resolve the issue. If consensus cannot be obtained by the Parties, the revised Agreement shall not be adopted as final.

**11.0 SAVINGS PROVISIONS AND OTHER**

- 11.1** This MOA does not change any of the requirements and obligations contained in any existing law or regulation, including but not limited to CAA, transportation conformity regulations (40 CFR, Parts 51 and 93), NEPA, or 15A NCAC. In the event of conflict between the provisions of this Agreement and an existing regulatory provision, the regulatory provision shall prevail.
- 11.2** Upon its execution by the Parties this MOA supersedes any and all previous Agreements between the signatories with respect to matters addressed herein.
- 11.3** This MOA does not create any, nor does it affect any existing, administrative or judicial right of the Parties.
- 11.4** If any provision of this MOA is rendered or declared invalid by any final court action or decree, or by reason of preemptive legislation, the remaining Sections of this MOA shall remain in full force and effect for the duration of the MOA.
- 11.5** Unless otherwise specified, in computing any period of time prescribed or allowed in this MOA, Rule 6 "Time" of the North Carolina Rules of Civil Procedure shall apply.

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**MPO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**NCDOT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**NCDEQ**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**USEPA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**FHWA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this AGREEMENT on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**FTA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_