

**AGREEMENT NO. DKPL-023:01  
ALLOCATION AND ADMINISTRATION  
OF METROPOLITAN PLANNING FUNDS**

This Agreement is made by and between the State of Delaware Department of Transportation, a Department created under the laws of the State of Delaware, hereinafter referred to as the "DEPARTMENT", and the Dover/Kent County Metropolitan Planning Organization, of Dover, Delaware, hereinafter referred to as the "DOVER/KENT COUNTY MPO."

WHEREAS, this Agreement, executed between the DEPARTMENT and the DOVER/KENT COUNTY MPO, is necessary to comply with the United States Government's procedures established for funding of metropolitan planning organizations under Section 112 of the 1973 Highway Act (as amended); and

WHEREAS, the Governor of the State of Delaware, in accordance with Federal law, has designated the DOVER/KENT COUNTY MPO as the Metropolitan Planning Organization to execute the provisions of 23 U.S.C. §134, 49 U.S.C. §5303, and 23 CFR Part 450 in the Dover metropolitan area and Kent County, including the entire municipalities of Smyrna and Milford, hereinafter referred to as the MPO Planning Area; and

WHEREAS, the DOVER/KENT COUNTY MPO has prepared a Fiscal Year 2023 Unified Planning Work Program (UPWP) covering the period July 1, 2022, through June 30, 2023, for the Dover Metropolitan Statistical Area (MSA) and the MPO Planning Area, which has been approved by the DEPARTMENT; and

WHEREAS, said period of performance for the DOVER/KENT COUNTY MPO fiscal Year 2023 is from July 1, 2022 to June 20, 2023; and

WHEREAS, the total cash cost estimate for Fiscal Year 2023 UPWP is \$1,142,060 (One Million, One Hundred Forty-two Thousand Sixty Dollars); of this amount Delaware's federal share shall be a sum of \$913,648 (Nine Hundred Thirteen Thousand Six Hundred Forty-eight Dollars) in Federal Highway Administration PL Funds and Federal Transit Administration Section 5303 Funds (as defined below), and \$228,412 (Two Hundred Twenty-eight Thousand Four Hundred Twelve Dollars) in State funds and services, and Local funds and services; and

WHEREAS, Federal Highway Administration (FHWA) PL Funds are defined as funds made available to the DEPARTMENT by FHWA to allocate to Metropolitan Planning Organizations to carry out the requirements of 23 U.S.C. §134; and

WHEREAS, Federal Transit Administration (FTA) Section 5303 Funds are defined as funds made available to the Department by FTA to allocate to Metropolitan Planning Organizations to carry out the requirements of 49 USC §5303; and

WHEREAS, the Federal Funds allocated by the DEPARTMENT to the DOVER/KENT COUNTY MPO for FY23 shall consist of:

1. \$742,339 (Seven Hundred Forty-two Thousand Three Hundred Thirty-nine Dollars) in FHWA PL Funds; and
2. \$171,309 (One Hundred Seventy-one Thousand Three Hundred Nine Dollars) in FTA Section 5303 Funds; and

WHEREAS the matching contribution shall be comprised of \$228,412 (Two Hundred Twenty-eight Thousand Four Hundred Twelve Dollars), \$191,591 (One Hundred Ninety-one Thousand Five Hundred Ninety-one Dollars) from the DEPARTMENT and \$36,821 (Thirty-six Thousand Eight Hundred Twenty-one Dollars) from LOCAL partners.

NOW, THEREFORE, in consideration of the mutual benefits accruing to each, the DEPARTMENT and the DOVER/KENT COUNTY MPO agree and covenant as follows:

1. The following recitals are incorporated by reference as if fully set forth herein.
2. The DEPARTMENT, in accordance with the provisions outlined in this Agreement, shall authorize and make available to the DOVER/KENT COUNTY MPO a total of \$913,648 (Nine Hundred Thirteen Thousand Six Hundred Forty-eight Dollars) in Federal Funds and \$228,412 (Two Hundred Twenty-eight Thousand Four Hundred Twelve Dollars) in DEPARTMENT funds, as delineated on page 2 of this AGREEMENT, to cover the federal and state share of the program costs for FY 2023.
3. The Scope of Work under this Agreement shall be the FY 2023 UPWP as approved by the DOVER/KENT COUNTY MPO Council and the Department, for the four quarters of fiscal year 2023 and incorporated by reference. The UPWP may be amended during the course of the year upon written request by the DOVER/KENT COUNTY MPO and subject to (1) the written approval of the DEPARTMENT and affected Federal Agencies, and (2) the availability of funding, if applicable.
2. Where the approval of the DEPARTMENT is indicated, the concurrence of FHWA and FTA shall also be deemed to be required. All approvals shall be documented in writing. The DOVER/KENT COUNTY MPO shall confer with the DEPARTMENT and with the representatives of the FHWA and FTA when and where requested by the DEPARTMENT. The close cooperation and liaison between the DEPARTMENT, the FHWA, the FTA, and the DOVER/KENT COUNTY MPO is to be maintained in order that all questions may be resolved and the needed approvals may be obtained, so as to permit an uninterrupted work effort by the DOVER/KENT COUNTY MPO.
3. The DEPARTMENT shall follow federal and Delaware law and procedures when awarding and administering subgrants to the DOVER/KENT COUNTY MPO and local governments. The DEPARTMENT shall have primary responsibility for administering the FHWA and FTA planning funds passed through to subrecipients covered by this Agreement, and for ensuring that such funds are expended for eligible activities and are administered in accordance with 23 CFR Part 420, 49 CFR Part 18, 2 CFR Part 200 and applicable cost

principles.

4. The DEPARTMENT shall review and approve any contract entered into by the DOVER/KENT COUNTY MPO that involves FHWA (PL) and FTA (Section 5303) funding and all multi-party contracts.

5. The DOVER/KENT COUNTY MPO shall submit monthly expenditure and performance reports within five business days after the last calendar day in the month. The DEPARTMENT, within ten business days upon receipt of appropriate reimbursement documentation shall reimburse the DOVER/KENT COUNTY MPO each month for its cost incurred with the above mentioned apportioned Federal Planning Funds. The DOVER/KENT COUNTY MPO shall submit a final expenditure and performance report no later than 90 days after the end of the reporting period.

6. The DOVER/KENT COUNTY MPO shall proceed with the work and/or services contemplated in this Agreement immediately after written notice to proceed by the DEPARTMENT.

#### **GENERAL PROVISIONS**

A. **RETENTION OF RECORDS** - All Records, including books, documents, papers, data, accounting records and any other evidence pertaining to costs incurred relating to or arising out of this Agreement, hereinafter referred to as "records", shall be kept by the DEPARTMENT, the DOVER/KENT COUNTY MPO and any of their subcontractors, consultants or the like. Such records, and any necessary copies of such records, shall be made available at any reasonable time and place to any authorized representative of the Federal government for inspection, examination or audit during the time of this Agreement and for the three years after the final voucher payment has been made by the Federal Government for this Agreement.

B. **ACCESS TO RECORDS** - The DEPARTMENT and Federal Government are herein authorized to review and inspect all work and services, including all papers, books, documents, maps, accounts, source data, photographs or the like relating to this Agreement and in particular to the DOVER/KENT COUNTY MPO Fiscal Year 2023 Unified Planning Work Program for Transportation and Comprehensive Planning for a period of seven (7) years, or until such time as any audit of the FY2023 UPWP is completed, whichever occurs first. Such review and inspection may be made at any reasonable time and place, and copies of any books, maps, documents, paper, account, photographs, source data or the like shall be provided by the DOVER/KENT COUNTY MPO.

C. **AGREEMENT TERMINATION** - This Agreement may be terminated at any time for any reason by either of the parties upon thirty (30) days written notice. Upon termination, the DEPARTMENT shall make reimbursement to the DOVER/KENT COUNTY MPO with federally allocated money for lawfully incurred costs by the DOVER/KENT COUNTY MPO up to and including the date of termination.

D. COPYRIGHT - The DOVER/KENT COUNTY MPO shall be free to copyright any material created, or developed under or because of this Agreement with the provision that the DEPARTMENT, FHWA and FTA reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the material for approved purposes.

E. PUBLISHED MATERIAL - All material published by the DEPARTMENT or the DOVER/KENT COUNTY MPO, created by, developed under, or because of, this Agreement shall contain a credit reference to the FHWA and FTA such as “prepared in cooperation with the United States Department of Transportation, Federal Highway Administration.”

F. SUBCONTRACTING - The DOVER/KENT MPO shall not subcontract or transfer any work or services covered by this Agreement without prior written approval of the DEPARTMENT. If the DOVER/KENT COUNTY MPO should hire a subcontractor, consultant or transfer any work or services covered by this Agreement, the terms and conditions of this Agreement shall also apply to the party or parties to whom such work is subcontracted or transferred.

G. FEDERAL AND STATE LAWS - The DOVER/KENT COUNTY MPO shall comply with all Federal and State laws applicable to the work and services to be done under this Agreement.

H. RESOLVING DISPUTES - The DOVER/KENT COUNTY MPO shall meet with the DEPARTMENT and others in the event that any matter arising out of this Agreement cannot be resolved in a mutually satisfactory manner. At such meetings, all interested parties shall be present with the Secretary of the DEPARTMENT who shall hear all arguments and render a final decision on the controversy that shall be binding on all parties concerned.

I. NONDISCRIMINATION - The DOVER/KENT COUNTY MPO agrees that, as a condition of receiving any Federal financial assistance from the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, related to nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the DOVER/KENT COUNTY MPO receives Federal financial assistance. The specific requirements of the U.S. Department of Transportation 49 CFR, Part 21 are incorporated by reference and made part of this Agreement.

During the performance of this agreement, the DOVER/KENT COUNTY MPO, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Regulations: The DOVER/KENT COUNTY MPO (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation,

Federal Highway Administration (FHWA), or Federal Transit Administration (FTA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination: The DOVER/KENT COUNTY MPO, with regard to the work performed by it during the agreement period, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The DOVER/KENT COUNTY MPO will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the DOVER/KENT COUNTY MPO for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the DOVER/KENT COUNTY MPO of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports: The DOVER/KENT COUNTY MPO will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT, the FHWA, or the FTA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the DOVER/KENT COUNTY MPO is in the exclusive possession of another who fails or refuses to furnish the information, the DOVER/KENT COUNTY MPO will so certify to the DEPARTMENT, the FHWA, or the FTA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the DOVER/KENT COUNTY MPO's noncompliance with the Non-discrimination provisions of this contract, the DEPARTMENT will impose such contract sanctions as it or the FHWA, or the FTA may determine to be appropriate, including, but not limited to withholding payments to the DOVER/KENT COUNTY MPO under the contract until the DOVER/KENT COUNTY MPO complies; and/or cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The DOVER/KENT COUNTY MPO will include the provisions of paragraphs one through five in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The DOVER/KENT COUNTY MPO will take action with respect to any subcontract or procurement as the DEPARTMENT, the FHWA, or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the DOVER/KENT COUNTY MPO becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the DOVER/KENT COUNTY MPO may request the DEPARTMENT to enter into any litigation to protect the

interests of the DOVER/KENT COUNTY MPO. In addition, the DOVER/KENT COUNTY MPO may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this Agreement, the DOVER/KENT COUNTY MPO, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 460I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority

populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13176, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1781 et seq).

J. EQUAL EMPLOYMENT OPPORTUNITY - The DOVER/KENT COUNTY MPO agrees to take affirmative action to ensure that applicants for employment and employees during employment are treated without regard to their race color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms or compensation, and selection for training.

K. DISADVANTAGED BUSINESS ENTERPRISE (DBE) - The DOVER/KENT COUNTY MPO agrees to comply with U.S. DOT regulations on DBE participation in accordance with 49 CFR Part 23. The DOVER/KENT COUNTY MPO also agrees to take all necessary and reasonable steps required by U.S. Department of Transportation regulations to ensure that eligible DBEs have the maximum feasible opportunity to participate in third party contracts financed with Federal financial assistance.

L. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - The DOVER/KENT COUNTY MPO shall comply with federal regulations surrounding Lower Tier Covered Transactions (third party contracts over \$100,000). For contracts over \$25,000 the DOVER/KENT COUNTY MPO will complete a search of the excluded parties listing system to ensure that the organization is not debarred or suspended from federally assisted contracts.

M. LOBBYING – THE DOVER/KENT COUNTY MPO shall comply with federal regulations regarding lobbying restrictions. The DOVER/KENT COUNTY MPO will obtain a signed “Certification of Restrictions on Lobbying” form for third party contracts over \$100,000.

N. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS - The DOVER/KENT COUNTY MPO shall comply with federal regulations surrounding program fraud and false or fraudulent statements and related acts for all third party contracts.

O. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS - The DOVER/KENT COUNTY MPO shall comply with FTA regulations surrounding the incorporation of FTA terms in all its third-party contracts. Contractors shall not perform any

act, fail to perform any act, or refuse to comply with any requests, which would cause the DOVER/KENT COUNTY MPO to be in violation of the FTA terms and conditions.

P. CLEAN WATER AND AIR REQUIRMENTS - The DOVER/KENT COUNTY MPO shall comply with federal regulations surrounding the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq. and the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq for all third party contracts over \$100,000.

Q. CONSERVATION - The DOVER/KENT COUNTY MPO shall comply with federal regulations surrounding energy efficiency in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 US Section 321 et seq.), for all third-party contracts.

R. SCOPE OF AGREEMENT - This Agreement represents the complete and total Agreement between the DEPARTMENT and the DOVER/KENT COUNTY MPO and shall only be amended by a written supplemental agreement in accordance with Delaware Law.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

The effective date of this Agreement shall be July 1, 2022.

ATTEST:

DELAWARE DEPARTMENT  
OF TRANSPORTATION

\_\_\_\_\_  
Charlanne Thornton  
Director, Finance  
Delaware Department of Transportation

\_\_\_\_\_  
Pamela Steinebach  
Director, Planning  
Delaware Department of Transportation

ATTEST:

DOVER/KENT COUNTY MPO

\_\_\_\_\_  
Michelle Vinson  
Executive Assistant  
Dover/Kent County MPO

\_\_\_\_\_  
Marilyn J. Smith  
Executive Director  
Dover/Kent County MPO

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General  
Delaware Department of Transportation

MJS:mjs