

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 2, 2018

SUBJECT: Sub-Recipient and Sub-Allocation Agreement with City of Asheville for 5307 Transit Funding

PRESENTER: Autumn Radcliff, Planning Director

ATTACHMENTS: 1. Sub-Recipient and Sub-Allocation Agreement

SUMMARY OF REQUEST:

Henderson County is required by the Federal Transit Administration (FTA) to enter into an agreement with the City of Asheville prior to receiving federal transit reimbursement funds. The purpose of the agreement is to (1) create a procedure by which the City of Asheville will pass through funds that have been reserved for Henderson County in an existing FTA transit grant application and (2) to establish a fair and rational distribution formula that will be used in future grant cycles to allocate federal transit funding between the City of Asheville, Henderson County, Buncombe County and Haywood County. Henderson County is responsible for the grant oversight and the operational responsibilities and compliance is through a third-party contract provider. Western Carolina Community Action (WCCA) serves as the County's contracted transit provider for both the urban fixed route and paratransit services.

The Office of the County Attorney has reviewed the draft agreement and finds it to be in compliance with the legal requirements for such agreements. Planning Staff recommends that the Board of Commissioners authorize the County Manager to execute the agreement as drafted. The Asheville City Council will review and approve the document at their next meeting.

BOARD ACTION REQUESTED:

Formal action by the Board of Commissioners is necessary to authorize the County Manager to execute the agreement.

Suggested Motion: I move that the Board of Commissioners authorize the County Manager to execute the attached Sub-Recipient and Sub-Allocation Agreement with the City of Asheville.

STATE OF NORTH CAROLINA
COUNTY OF _____

**SUB-RECIPIENT & SUB-ALLOCATION AGREEMENT FOR 5307 FEDERAL
TRANSIT ADMINISTRATION FUNDS**

THIS AGREEMENT made and entered into this the ____ of _____, 2018, by and between the **HENDERSON COUNTY**, a body politic and corporate under the laws of the State of North Carolina, (herein “Sub-recipient”), and the **CITY OF ASHEVILLE**, a municipal corporation, organized and existing under the laws of the State of North Carolina (herein “City”) (collectively referred to as the “Parties”).

WITNESSETH:

WHEREAS the Federal government established the Asheville Urbanized Area (herein “AUZA”) which made local jurisdictions within the AUZA eligible for public transit funding under the Urbanized Area Formula Program (herein “Program”), codified at 49 U.S.C. 5307 (“Section 5307”); and

WHEREAS the Federal Transit Administration (herein “FTA”) administers the Program, whose funds are intended for use within the AUZA and must be allocated to eligible recipients according to the FTA’s guidelines as set forth in the FTA Circular 9030.1E, including the fair and rational distribution of Sub-recipient funding; and

WHEREAS the French Broad River Metropolitan Planning Organization (herein “French Broad River MPO”), is the regional transportation planning organization for the AUZA; and

WHEREAS the City is the Designated Recipient for the Section 5307 Program funds allocated to the AUZA, and the Sub-recipient is an eligible sub-recipient of Section 5307 Program funds; and

WHEREAS, the French Broad River MPO adopted a funding allocation formula for eligible recipients of Program funding, which is established in the “Resolution Adopting the 5307 Transit Funding Allocation Formula for Use in the French Broad River MPO Region” (herein “Formula”) on February 23, 2017, as amended by most recent MPO board resolution (herein “French Broad River MPO Resolution”); AND

WHEREAS, the parties wish to enter into this Agreement to address the allocation, disbursement and accounting of the Section 5307 Program funds.

NOW THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the Parties agree as follows:

A. ALLOCATION

1. Method of Financing. The total amount of Section 5307 Program funds is determined annually by the Federal Transit Administration (FTA). The allocation of funds to be passed through to the Sub-recipient by the City is determined by the French Broad River MPO Resolution.
2. Formula. The Parties agree to the Formula established for the Section 5307 Program eligible recipients and sub-recipients as set forth in the French Broad River MPO Resolution. The Parties agree that the Formula shall be subject to review and reconsideration in 2020. The Parties agree that the Formula may be reviewed earlier upon request from the City, a current sub-recipient of Section 5307 Program funds, or a potentially eligible sub-recipient of Section 5307 Program funds.

B. DISBURSEMENT

1. Local Matching Funds. The Sub-recipient agrees to provide local matching funds as required by FTA guidelines in order to receive its allocation of Section 5307 Program funds.
2. Reimbursement by the City. Subject to the availability of funds and upon the submission by the Sub-recipient to the City of invoices, reports and supporting documentation necessary to draw down Section 5307 Program funds, the City will reimburse the Sub-recipient for eligible costs incurred during the subject period. Payment shall be made to the Sub-recipient within 45 days. The total amount of Section 5307 Program funds allocated to a project or projects will be the controlling maximum amount for which reimbursement can be requested.
3. Sub-recipient Reimbursement Request Procedures. The Sub-recipient shall submit an Expenditure Report and Milestone Progress Report to the City fifteen (15) days after the quarter ends for funds expended during the subject period. The Sub-recipient shall submit an Annual Performance Report for the Sub-recipient's fiscal year to the City no later than August 31 to meet NCDOT and USDOT reporting deadlines (September 30).

- a. Expenditure Report. The report shall identify expenditures by work task for the subject period. Work tasks shall be consistent with task descriptions, objectives and expected deliverables (work products) specified in the Section 5307 Program project application and consistent with the State Transportation Improvement Plan (herein “STIP”). The report shall be filed even if no expenses are incurred during the subject period.
- b. Milestone Progress Report. The report shall include a detailed evaluation of work accomplishments compared to expected deliverables (work products) as achieved by the Sub-recipient and any contractor or subcontractor during the subject period. The Annual Performance Report may serve as the Milestone Progress Report for the fourth quarter of the Sub-recipient’s fiscal year.
- c. Annual Performance Report. The report shall include a detailed evaluation of: (1) work accomplishments during the Sub-recipient’s fiscal year compared to expected deliverables (work products); (2) progress in meeting schedules; and (3) significant work task cost changes (overruns/underruns) during the Sub-recipient’s fiscal year. The report shall also identify: (1) any approved changes in Section 5307 Program funds; and (2) items of interest (reorganization, personnel changes, etc.) during the Sub-recipient’s fiscal year. The report should be concise and not exceed two pages in length.

The Expenditure Report, Milestone Progress Report, and Annual Performance Report forms shall be provided to the Sub-recipient by the City.

c. ACCOUNTING

1. Accounting Records. The Sub-recipient shall maintain accounting records and all other documents in full compliance with the provisions of Section 2 below and shall also maintain all other documents necessary for federal and state audit purposes.
2. Accounting Procedures. A separate account should be established for each separate grant from the Section 5307 Program funds. All costs charged to the project shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges, as referenced in 2 C.F.R. 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”. Accounts established for Section 5307 Program funds will be included in the annual audit of the agency in accordance with 2 CFR Part 200.

3. Access to Records. The Sub-Recipient shall permit and shall require its third party contractors to permit the City, the North Carolina Department of Transportation (NCDOT), the Comptroller General of the United States, and the Secretary of the United States Department of Transportation (USDOT), or their authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to any grant project, and to audit the books, records, and accounts of the Sub-recipient pertaining to the grant project. The Sub-recipient shall bear the cost of any work task not approved by the NCDOT and USDOT. In the event an audit of expenses incurred by the Sub-recipient reveals costs which are not eligible for federal or state funding, the Sub-recipient agrees to reimburse the City in full for costs which the City has invoiced on behalf of the Sub-recipient and reimbursed to the Sub-recipient.

D. ADDITIONAL OBLIGATIONS OF THE PARTIES

1. City Responsibilities.

- a. Oversight. The City agrees to comply with applicable FTA regulations and provide grant management and Sub-recipient oversight.
- b. Application. The City, as the Designated Recipient of Section 5307 Program funds for the AUZA, shall be responsible for submitting all Section 5307 Program funds grant applications, budget amendments, budget adjustments, and any other updates to the grant application for the Sub-recipient. The City will make every effort to submit the grant application by October 1 of the subsequent federal fiscal year. The City shall make available to the Sub-recipient the grant application, the approved application, and any amended application.
- c. Distribution of Funds. The City agrees to distribute the Section 5307 Program funds to the Sub-recipient as received from the FTA for the Section 5307 Program as determined by the Formula and in accordance with federal statutes, regulations and circulars.

2. Sub-recipient Responsibilities.

- a. Capacity. The Sub-recipient agrees to maintain sufficient legal, financial, technical and managerial capacity to:
 - i. Plan, manage and complete the projects and services funded through the Section 5307 Program;

- ii. Comply with the terms of this Agreement, the approved Section 5307 Program project budget, and the project schedule for each applicable Section 5307 Program grant year; and
 - iii. Comply with all applicable federal laws, rules, regulations and Section 5307 Program requirements.
- b. Capital. For “capital” as defined by FTA, the Sub-recipient agrees that in accepting Section 5307 Program funds, it shall be responsible for the purchase, operation and maintenance of all capital related to transit purchased through the use of Section 5307 Program funds, including but not limited to its transit fleet, subject to applicable federal laws, rules and regulations and Section 5307 Program requirements.
- c. Change in Conditions. The Sub-recipient shall notify the City immediately of any change in conditions (including its legal, technical, financial or managerial capacity), change in local law, or other event that may significantly affect the Sub-recipient’s ability to perform the project in accordance with the terms of this Agreement.
- d. Timely Response. The Sub-recipient shall provide timely responses to requests by the City, the FTA, or an independent entity for information and/or documentation in regards to reviews, audits and/or evaluations. The Sub-recipient shall maintain and make available such records and accounts, including property, personnel and financial records deemed necessary or required by the FTA to assure the proper accounting for all Section 5307 Program funds.
- e. Designation of Third Party. The Sub-recipient may designate third parties to undertake all or any part of this Agreement. The use of a third party shall not relieve the Sub-recipient from compliance with the terms of this Agreement and all third parties shall be bound in writing to the same provisions required in this Agreement.
- f. Indemnification. To the extent permitted by and consistent with North Carolina law, the Sub-recipient will indemnify and save harmless the City from all loss, cost and expense, including attorney fees, arising out of any liability for injury or damages to persons or property sustained or claimed to have been sustained by anyone whomsoever by reason of the Sub-recipient, its officers, agents and employees act(s) arising out of the performance of this Agreement herein above described, or by reason of any act or omission on the part of Sub-recipient’s officers, agents, or employees. The Parties agree that nothing in the Agreement constitutes a waiver of sovereign/governmental immunity.

3. City and Sub-recipient Responsibilities.

- a. Compliance. The parties shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state or local government, and any agency thereof, which relate to or in any manner affect the performance of this Agreement. Such regulations and requirements include, but are not limited to, 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 49 U.S.C. 5307, FTA Circular 9030.1E, FTA’s Master Agreement, as well as the City’s FTA Fiscal Year Certifications and Assurances, and any amendments thereto. These requirements shall be incorporated into any federally-assisted contracts Sub-recipient enters into with third parties.
- b. Expenditure of Grant Funds. Section 5307 funds are available for obligation during the federal fiscal year for which they were apportioned plus a specified number of additional years as prescribed by FTA Circular 9030.1E. The Sub-recipient shall work with the City to ensure all program funds are used before program funds expire.
- c. Personnel. The City Manager shall designate City personnel and the Sub-recipient’s governing board shall designate personnel as necessary to carry out the responsibilities of the City and Sub-recipient respectively, under this Agreement.

E. GENERAL PROVISIONS

1. Duration of Agreement. The term of this Agreement shall begin when the Agreement is executed by the City and shall remain in effect until the Section 5307 Program funds are no longer available or until such time as the Agreement is terminated by the Parties hereto. If the term of this Agreement has not expired before 11:59 P.M. on June 30, 2035, it shall expire at that time.
2. Termination. This Agreement may be terminated by either party by providing one year written notice to other party.
3. Assignability. This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning party.
4. Amendments. Any amendments to the provisions contained herein shall be made in writing and consented to by both Parties.

5. Service of Process. Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, return receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

For City of Asheville:

Transportation Planning Manager
Vaidila Satvika
P.O. Box 7148
Asheville, NC 28802

For Sub-recipient

Henderson County Planning Department
Autumn Radcliff, Planning Director
100 N. King Street
Hendersonville, NC 28792

6. Pre-Audit Certificate. Both parties must certify that this document had been pre-audited in the manner required by the Local Government and Fiscal Control Act. N.C.G.S 159-28.
7. Documents of Incorporation. This Agreement is expressly made subject to all federal, state and local laws, rules, regulations and circulars, to the grant agreement between the City and the FTA, and to the agreements between the City and Sub-recipient. All of the foregoing are hereby made part of this Agreement and incorporated herein by reference.
8. Governing Law. All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Buncombe County Civil Superior Court or the United States District Court for the Western District of North Carolina.
9. Compliance with Applicable Laws. The parties shall comply with any and all applicable federal, state, and local statutes, regulations, laws, and ordinances including those established by the FTA.
10. Severability. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such as invalidity, illegality or unenforceability, it will not affect any other provisions, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
11. Headings. All headings that appear as section numbers in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any of the provisions of the Agreement.

12. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Sub-recipient.

13. Authorization by Parties. All Parties hereby respectively confirm that the individuals executing the Agreement are authorized to execute this Agreement and to bind the respective entities to the terms contained herein. All Parties confirm they have read this Agreement and, conferred with counsel, and fully understand its contents.

14. E-Verify. Parties comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of the Parties' knowledge, any subcontractor employed by a contractor of the Sub-recipient as a part of this Agreement shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

15. Iran Divestment Act. Each Party herein certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, the Parties shall not utilize in the performance of this Agreement any contractor or subcontractor that is identified on the Final Divestment List.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

Attest:

CITY OF ASHEVILLE

 Magdalen Burleson, City Clerk
 (official seal)

By: _____
 City of Asheville Manager

Henderson County

By: _____
 Steve Wyatt, County Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid do hereby certify that Magdalen Burleson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this ____ day of _____, 2018.

Notary Public
Print or type name _____
My Commission expires _____

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid do hereby certify that _____, personally, came before me this day and acknowledged that he/she is the _____ of the _____, a body politic and corporate, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ and attested by him/herself as its _____.

Witness my hand and notarial seal this ____ day of _____, 2018.

Notary Public
Print or type name _____
My Commission expires _____

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in accordance with the Local Government Budget and Fiscal Control Act N.C.G.S. 159-28.

By: _____ Date: _____

Name (Print): _____
City of Asheville Finance Director

By: _____ Date: _____

Name (Print): _____
Henderson County Finance Director