

**REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: June 17, 2020

SUBJECT: Subrecipient and Sub-Allocation Agreement with the City of Asheville for Federal Transit Administration CARES Act Funding

PRESENTERS: Autumn Radcliff, Planning Director

ATTACHMENTS: 1. Subrecipient and Sub-Allocation Agreement

SUMMARY OF REQUEST:

The Federal Transit Administration (FTA) requires the direct recipient of federal funds to create and execute a subrecipient agreement with each subrecipient. The City of Asheville is the direct recipient of all federal transit funds in the region and manages the formula-based allocations for Buncombe County, Haywood County, Madison County, and Henderson County. Although we currently have an agreement with the City of Asheville the Board of Commissioners approved in April 2018, the agreement was specific to Section 5307 funding. The attached agreement is for the disbursement of CARES Act funds granted by the FTA without a formal application.

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. The agreement needs to be approved prior to the start of the upcoming fiscal year.

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 Subrecipient and Sub-Allocation Agreement with the City of Asheville.

**STATE OF NORTH CAROLINA
COUNTY OF _____**

**SUBRECIPIENT AND SUBALLOCATION AGREEMENT FOR FY2020 CARES ACT
ADMINISTRATION FUNDS**

THIS AGREEMENT made and entered into this the ___ of _____, 2020, by and between the _____, 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 Asheville Urbanized Area receives an apportionment of FTA 5307 Urban Transit Formula funds annually, and the City of Asheville is the Designated Recipient for Section 5307 Urban Transit Formula funds in our region with Buncombe, Haywood, and Henderson Counties eligible for a portion of Section 5307 FTA Urban Transit Funds as subrecipients to the City of Asheville; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was created to help transit agencies prevent, prepare for, and respond to the COVID-19 pandemic by covering expenses incurred after January 20, 2020 under the Section 5307 FTA Urbanized Area Transit Funding formula Program,

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 for 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 (FBRMPO) completed the Section 5307 Urban Transit formula Funding Suballocation Study to determine how to distribute FTA Section 5307 Urban Transit Formula funds apportioned to the Asheville Urbanized area; and

WHEREAS, the adoption of the study’s recommendations included a resolution to set aside 10% of Section 5307 FTA Urban Transit Formula Funds for Jobs Access Reverse Commute (JARC) for which a call for projects would be held annually, and

WHEREAS, the CARES Act funding is being added to Section 5307 FTA Urban Transit Formula funding and must be distributed in the same manner as Section 5307 FTA Urbanized Area Transit Funding Formula funds; and

WHEREAS, the French Broad River Metropolitan Planning Organization Board has reviewed the recommendations provided by the current recipients of Section 5307 FTA Urban Transit Formula funds including the City of Asheville, Buncombe County, Haywood County, and Henderson County, who convened and discussed CARES Act funding on April 13, 2020; and

WHEREAS, the 5307 Urban Transit Formula funding made available to the Asheville UZA through the CARES Act will be distributed to subrecipients based on the Adopted French Broad River MPO 5307 Suballocation Formula on April 28, 2020 without a 10% set-aside for regional Job Access Reverse Commute Activities.

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 CARES Act Section 5307 Urban Transit Funds was determined by the Federal Transit Administration (FTA). The portion of these funds to be passed through to the Sub-recipient by the City is determined by the French Broad MPO.
2. Formula. The Parties agree to the terms and funding suballocation formula (herein “Formula”) established for the CARES Act 5307 eligible recipients as set forth in the French Broad’s MPO Resolution adopted April 28, 2020. The Formula may be reviewed earlier upon request from the City, a current 5307 sub-recipient, or a potentially eligible 5307 sub-recipient agency.

B. DISBURSEMENT

1. Local Matching Funds. For the FY2020 CARES Act 5307 Urban Transit Formula funding, no local match is required by the FTA to program funds.
2. Reimbursement. Subject to the availability of funds, the City will reimburse the Sub-recipient quarterly, upon the timely submission by the Sub-recipient to the City of all necessary reports and statements under the Section 5307 programs.
3. Reimbursement Procedures. Invoices, documentation and reports should be submitted to the City. Sub-recipient shall submit an invoice and appropriate

documentation and reports to the City no later than thirty (30) days after the federal quarter ends for funds expended during the subject period together with the amount being requested for reimbursement. The invoice shall include a quarterly expenditure report. The report shall identify expenditures by work task and shall include a detailed evaluation of work accomplishments, work products and project deliverables.

C. ACCOUNTING

1. Accounting Records. Sub-recipient shall maintain accounting records and all other documents in full compliance with the provisions of Section 2, paragraphs (a) through (f) below and shall also maintain all other documents necessary for federal and state audit purposes. Sub-recipient shall establish a budget code for the planning funds program.

2. Accounting Procedures
 - a. A separate account should be established for each separate grant from the Section 5307 funds and all transactions recorded in accordance with acceptable accounting procedures which are approved by N.C. Department of Transportation and US Department of Transportation per 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regarding standards for grantee financial management systems.
 - b. The account established for the funds will be included in the annual audit of the agency in accordance with 2 CFR Part 200.
 - c. Time spent for staff services on work provided for in Section 5307 programs shall be recorded by work task on either standard monthly, weekly, or biweekly time sheets for each individual and filed for audit purposes.
 - d. Cost for transportation, office and other expendable supplies, printing, copying work, keypunching, computer processing, mapping and aerial photography should be supported by receipts, logs and vouchers as appropriate.
 - e. Reimbursement should be on a basis of vouchers submitted and supported by similar documents as required by the City. The vouchers should, at a minimum, specify the staff time expended and description of work task for which the reimbursement is requested. Work tasks must be consistent with task descriptions, objectives and expected deliverables (work products) specified in

the project application process in TrAMS. The FTA does not require programming of the CARES Act Urban Transit Formula Funds in the State Transportation Improvement Plan (STIP), unless projects include substantial, functional, location, or capacity changes to the asset or system.

- f. The total amount of Sections 5307 funds allocated to a project or projects will be the controlling amount for which reimbursement can be claimed for a given grant.
3. Quarterly Progress Report Procedures. Quarterly progress reports should be submitted to the City's Transportation Department no later than thirty days after the federal quarter ends. The quarterly progress report should include a brief narrative report of work accomplished by the agency and any subcontractor. The quarterly progress report shall be included with the invoice and expenditure report.
4. Annual Performance Report. An annual performance report is to be submitted with the final funds invoice submission for a fiscal year. The written narrative of the performance report should (1) compare work accomplishments to anticipated work goal; (2) discuss progress in meeting schedules; (3) comment on significant task cost overruns/underruns; (4) identify any approved changes in the grant funds; and (5) discuss any items of interest, i.e. reorganization and personnel changes. The narrative portion of the report should be concise, generally one to two pages in length. In order to accommodate NCDOT/USDOT September 30 deadlines, performance reports, documenting the previous fiscal year, must be submitted to the City's Transportation Department no later than July 30 each year.
5. Audits. The City and NCDOT or USDOT shall be permitted to review, inspect, or study activities of the Sub-recipient under the Section 5307 program. The Sub-recipient shall bear the cost of any work 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, but for which the City has invoiced on behalf of the Sub-recipient and reimbursed the Sub-recipient, the Sub-recipient agrees to reimburse the City, in full.

D. OBLIGATIONS OF THE PARTIES

1. City Responsibilities. The City agrees to distribute the funds to the Sub-recipient as received from the FTA for the Program as determined by the Formula and in accordance with federal statutes, regulations and circulars. The City agrees to

comply with applicable FTA regulations and provide grant management and subrecipient oversight.

2. Subrecipient responsibilities.

a. Capacity. Subrecipient agrees to maintain sufficient legal, financial, technical and managerial capacity to:

- Plan, manage and complete the projects and services funded through the Program (FTA 5307) funds;
- Comply with the terms of this agreement, the approved project budget, and the project schedule for each applicable funding year; and
- Comply with all applicable federal laws, regulations and Program requirements.

b. Capital. Sub-recipient agrees that in accepting Program funds, it shall be responsible for the purchase, operation and maintenance of all capital related to transit purchased through the use of Program (5307 urban) funds, including but not limited to its transit fleet, subject to applicable federal rules and regulations.

c. Change in conditions. 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 their agreement.

d. Timely response. 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. 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 Program funds.

e. Indemnification. Sub-recipient agrees that the City shall not be liable for damages or losses arising out of the performance of this Agreement by the Sub-recipient, its employees, officers, agents, contractors or subcontractors. To the maximum extent allowed by law, the Sub-recipient shall indemnify and hold harmless, the City, its officers, agent and employees from all claims and costs, including attorney fees, arising out of this Agreement as a result of the actions or omissions of the Sub-recipient, or anyone directly or indirectly employed by the Sub-recipient.

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. 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 CARES Act Section 5307 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, 2022, it shall expire at that time.**
2. Termination. This Agreement may be terminated by either party by providing one year written notice to the 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:

For Sub-recipient:

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 Contract 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. The parties herein have complies 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 as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

15. Iran Divestment Act Certification. The Parties herein certify 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 the contract any 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 duty authorized representative.

Attest:

CITY OF ASHEVILLE

Magdalen Burleson, City Clerk
(official seal)

By: _____
Debra Campbell, City Manager

SUBRECIPIENT

By: _____

Name and Title: _____

ENDORSEMENT BY FRENCH BROAD MPO

This Agreement has been deemed to be fair and rational by the French Broad MPO.

Endorsed: This the _____ day of _____, 2020

Bill Lapsley, FBRMPO Board Chair

Attest, Tristan Winkler, Director
French Broad River MPO

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 _____, 2020.

Notary Public

Print or type name _____

My Commission expires _____

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited by 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): _____

_____ Finance Director