MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (MOA), is made by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter, "NCDOT"), the NATIONAL PARK SERVICE (hereinafter, "NPS"), NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter, "NCDEQ"), the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (hereinafter, "USEPA"), the FEDERAL HIGHWAY ADMINISTRATION-EASTERN FEDERAL LANDS HIGHWAY DIVISION (hereinafter, "FHWA-EFLHD"), the FEDERAL TRANSIT ADMINISTRATION (hereinafter, "FTA"), and collectively referred to hereinafter as the Parties.

PURPOSE

The purpose of this MOA is to satisfy the requirement in Clean Air Act (CAA) Section 176(c)(4)(E) [Title 42 of the U.S. Code 7506(c)(4)(E)] to create a state conformity State Implementation Plan (SIP) containing the following three requirements of the Federal Transportation Conformity Rule, in the Code of Federal Regulations (hereinafter, "CFR"), at 40 CFR, Part 93, Subpart A: (1) 40 CFR 93.105, which addresses consultation procedures; (2) 40 CFR 93.122(a)(4)(ii), which requires written commitments to control measures that are not included in the statewide transportation improvement program prior to a positive conformity determination, and that such commitments be fulfilled; and (3) 40 CFR 93.125(c), which require written commitments to mitigation measures to be obtained prior to a positive conformity determination, and that project sponsors comply with such commitments.

This MOA is for the purpose of conducting cooperative planning and analysis of, and determining transportation conformity for all transportation projects in the designated rural nonattainment and maintenance areas of Great Smoky Mountains National Park within North Carolina. This MOA satisfies the requirement of 40 CFR 93.109 and 23 CFR 93.106 which requires the State Department of Transportation to be responsible for making the conformity determination in isolated rural areas. The provisions of this MOA will apply only to individual non-exempt transportation projects located within the limits of the Great Smoky Mountains National Park in North Carolina. The FHWA-EFLHD in consultation with the NPS will, in accordance with 40 CFR 93.126, 93.127, and 93.128 determine which transportation projects proposed within the limits of the Great Smoky Mountains National Park in North Carolina are non-exempt and therefore subject to the provisions of this MOA.
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 NCDOT 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 "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.

1.5 "Statewide Interagency Consultation Meetings" (SICM) -- refers to regularly scheduled informational meetings, sponsored by NCDEQ to which all Parties that are required to have air quality conformity determinations pursuant to Title 15A NCAC Subchapter 02D, Section .2000, are invited, including all Metropolitan Planning Organizations (MPOs), and Rural Planning Organizations (RPOs) throughout the State.

1.6 "Statewide Transportation Improvement Program" (STIP) -- means a statewide prioritized listing/program of transportation projects that is consistent with the long-range statewide transportation plan, TIPs, and required for projects to be eligible for funding pursuant to Title 23 USC and Title 49 USC Chapter 53.

1.7 "Timely" -- means within the timeframe agreed to in the schedule set at the Interagency Consultation Conformity Determination Meeting(s).

1.8 "Transportation Improvement Program" (TIP) -- means a prioritized listing/program of transportation projects that are developed by FHWA-EFLHD in coordination with the NPS and required for projects to be eligible for funding pursuant to Title 23 USC and 49 USC Chapter 53.

1.9 "Transportation Providers" -- means public agencies that provide transportation services to the public, these agencies are publically owned and operated.

1.10 "Parties" -- means representatives from all signatory agencies to this Agreement.

1.11 "Exempt and Non-Exempt Project" -- Exempt projects do not add capacity and are defined in accordance with 40 CFR 93.126 through 93.129.
1.12 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 ROLES AND RESPONSIBILITIES

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 provide their names and contact information to NCDEQ and notify NCDEQ of changes in their appointed designee(s) or contact(s).

2.0.2 All Parties shall review and provide comments to NCDOT on projects in designated rural nonattainment and maintenance areas of Great Smoky Mountains National Park within North Carolina utilizing Title 23 funds. The FHWA-EFLHD TIP submittal each year (at end of Federal Fiscal year) to NCDOT will indicate the "exempt/non-exempt status" as determined by FHWA-EFLHD in consultation with NPS. All Parties shall review and provide comments to NCDOT and/or local project sponsors on project-level conformity determinations prepared during the National Environmental Policy Act (NEPA) process for FHWA-EFLHD/FTA projects. Parties shall provide their timely review comments to these agencies within thirty (30) days of receipt of draft documents unless an alternate deadline has been agreed upon at a consultation meeting. The 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 NCDOT

2.1.1 NCDOT shall sponsor the Interagency Consultation Conformity Determination Meetings, if it is determined there are non-exempt projects, and prepare meeting agendas, meeting materials and meeting summaries required for fulfillment of consultation procedures outlined in this Agreement. Meeting summaries and conclusions shall be provided to Parties within seven (7) days unless an alternative deadline has been agreed upon at a consultation meeting. NCDOT shall also participate in other appropriate committees/meetings established to discuss with the Parties on the development of a revised statewide transportation plan and STIP amendments. A complete conformity determination takes approximately one (1) year to complete, therefore, the first interagency consultation meeting should begin no later than one (1) year prior to when the conformity determination is needed.
2.1.2 NCDOT, in coordination with other affected agencies, shall conduct transportation conformity regional emission analyses for the entire nonattainment area which complies with the applicable requirements of 40 CFR, Part 93. The first interagency consultation meeting with all Parties will determine the proposed procedures and protocol for conducting and performing conformity analysis.

2.1.3 NCDOT shall be responsible for the development and maintenance of tools appropriate for the conformity analyses for the Great Smoky Mountains National Park area in consultation with the Parties. 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 evaluation. NCDOT shall provide all Parties with available travel data and assist NCDEQ as needed for modifications or revisions to the SIP, which will include the assessment of effectiveness of existing Transportation Control Measures (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.

2.1.4 NCDOT shall provide information requested by other Parties to track the implementation of TCMs included in the SIP.

2.1.5 NCDOT shall submit concurrently, upon completion, a draft conformity determination report to the NCDEQ, NPS, and to FHWA-EFLHD (FHWA-EFLHD 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). NCDOT shall respond in writing to comments made by the other Parties on draft documents.

2.1.6 NCDOT shall maintain procedures for public involvement in the conformity determination process consistent with its Unified Public Engagement Process including receiving and responding to public input on conformity findings, consistent with 23 CFR 450.316(a) and 40 CFR 93.105(e).

2.1.7 NCDOT 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, as well as local hot spot analysis, prior to making a positive conformity determination. NCDOT shall obtain written commitments to mitigation measures 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

2.2.1 NCDEQ shall participate in the Interagency Consultation Conformity Determination Meetings and other appropriate committees established to advise the Parties on SIP and emissions control strategies and programs particularly as these relate to transportation issues.
2.2.2 NCDEQ shall sponsor the SICM Meetings on a regular basis for the purpose of keeping all Parties and all RPOs/MPOs and NPS abreast of new information concerning transportation planning generally as it relates to conformity analyses, determinations, SIPs under development, SIP revisions submitted to USEPA and any new federal regulations that may impact transportation planning. NCDEQ shall maintain a distribution list of SICM members and distribute the list to members as requested.

2.2.3 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 NCDOT and the other Parties in transportation-related SIP development processes. NCDEQ is to develop the applicable motor vehicle emission 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, including ensuring the appropriate emissions and control measures are used. NCDEQ shall update the SIP consistent with federal CAA requirements. NCDEQ shall provide the applicable motor vehicle emission budgets to NCDOT and USDOT.

2.2.4 NCDEQ shall obtain 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 NCDOT) in the SIP. NCDEQ shall also provide a list of TCMs included in the SIP as well as their SIP implementation schedules at the Interagency Consultation Conformity Determination Meeting. Upon initiating a modification or revision to the SIP, NCDEQ shall consult with NCDOT, which will include the assessment of effectiveness of existing TCMs and implementation of potential TCMs for inclusion in the SIP. A draft version of the SIP will be shared with the Parties, at a minimum, thirty (30) days prior to the public comment period ending.

2.2.5 NCDEQ, at the written request of NCDOT, shall provide appropriate emission factors to NCDOT for completion of the conformity analysis, as well as review and comments on the draft conformity analysis (within twenty-one (21) days of receipt) to NCDOT. NCDEQ shall consult with NCDOT for the availability and appropriate use of local data in the latest EPA-approved emissions model.

2.2.6 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.

2.2.7 NCDEQ shall consult and review project narratives provided by NPS, FHWA-EFLHD, or the appropriate project sponsor to determine if a roadway project is exempt or non-exempt pursuant to 40 CFR 93.126 through 93.129.
2.3 **FHWA-EFLHD and FTA (USDOT)**

2.3.1 FHWA-EFLHD in consultation with the NPS will, in accordance with 40 CFR 93.126, 93.127, and 93.128, determine which transportation projects proposed within the limits of the Great Smoky Mountains National Park in North Carolina are exempt or non-exempt and therefore subject to the provisions of this MOA. FHWA-EFLHD shall notify the Parties of projects determined to be exempt and provide a basis of exempt status for their review and concurrence.

2.3.2 FHWA-EFLHD and FTA shall consult with the Parties regarding 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. FHWA-EFLHD may participate in the SICM meetings.

2.3.3 FHWA-EFLHD and FTA shall advise the Parties of changes to USDOT technical, regulatory, and policy guidance as it relates to the planning process and conformity.

2.3.4 FHWA-EFLHD and FTA shall assist NCDEQ and NCDOT 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.

2.3.5 FHWA-EFLHD will coordinate the federal review effort and will forward copies of the draft or final TIP document and related conformity determination to the FTA and USEPA unless an alternate coordination process is specified through interagency consultation. FHWA-EFLHD 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. They shall also review and provide timely approval or rejection, in writing, of the final conformity determination report by NCDOT of an amended and/or adopted transportation plan, program or project subject to conformity analysis and determination. FHWA-EFLHD and FTA shall assess NCDOT’s compliance with public participation policy and procedures that meet the requirements of 23 CFR 450.316(a) and 40 CFR 93.105(e).

2.3.6 In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, FHWA-EFLHD/FTA 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 completion of the NEPA process. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. FHWA-EFLHD/FTA shall be responsible for final approval or rejection of a project level conformity determination on FHWA-EFLHD/FTA projects.
2.4 USEPA

2.4.1 USEPA shall participate in the SICM Meetings, 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 USEPA shall advise the Parties of changes to USEPA policy, regulation, and guidance related to air quality and conformity.

2.4.3 USEPA shall review and comment, in writing to FHWA-FLH/FTA, NCDEQ, NSPS, and NCDOT, on draft and final conformity analyses within thirty (30) days of receipt.

2.4.4 USEPA shall assist NCDEQ, NCDOT, and NPS, 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.

2.4.5 USEPA shall review the adequacy of the motor vehicle emissions budgets, and determine the approvability 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 in writing and provided to all Parties.

2.4.6 USEPA shall be consulted with and will review compliance for project-level conformity requirements related to individual FHWA-FLH/FTA projects and provide comment in writing.

2.5 NPS

2.5.1 NPS shall participate in the Interagency Consultation Conformity Determination Meetings and other appropriate committees/meetings established to advise the Parties on the SIPs and emissions control strategies and programs particularly as these relate to transportation-related issues. Additionally, NPS may participate in SICM Meetings.

2.5.2 NPS shall participate in consultations with the Parties regarding the development process for Great Smoky Mountains National Park project(s) out of the STIP and conformity analysis as part of the environmental document following the NEPA process for public review and comment.

2.5.3 NPS 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. NPS shall also review and provide comments to NCDOT on draft conformity analyses.
2.5.4 NPS shall conduct project-level conformity analyses for projects as part of the NEPA process for NPS and FHWA-EFLHD/FTA projects located in the Great Smoky Mountains National Park Boundaries.

3.0 INTERAGENCY CONSULTATION CONFORMITY DETERMINATION MEETING

When the need for conformity analysis and determination is initiated in accordance with this Agreement and aforementioned regulations, NCDOT shall call an Interagency Consultation Conformity Determination Meeting to which all Parties of this Agreement shall be invited by NCDOT. 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.

3.1 MEETINGS

NCDOT shall provide at least fourteen (14) days written notice to the Parties, and local transportation partners represented by NCDOT, that an Interagency Consultation Conformity Determination Meeting has been scheduled. 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.

The meeting shall be scheduled at a time and location that allows representatives from the Parties to participate. NCDOT 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 NCDOT 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), NCDOT or its designee shall consider whether meaningful consensus can be reached with the available Parties. If NCDOT 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.

3.2 CONSULTATION ON CONFORMITY ANALYSIS APPROACH

NCDOT 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.
3.2.1 **EXEMPTIONS TO CONFORMANCE DETERMINATIONS**

3.2.1.1 **Notification of Exempt Status Required** -- FHWA-EFLHD, in consultation with NPS, shall notify the Parties of projects determined to be exempt and provide a basis for such exempt status.

3.2.1.2 **Objection to Exempt Determination** -- If the Parties disagree with the FHWA-EFLHD's finding that the projects are exempt; the objecting Party shall notify all Parties in writing. See Section 5.0 for conflict resolution procedures.

3.2.2 **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:

3.2.2.1 Evaluating and choosing an appropriate tool (or tools) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

3.2.2.2 Determining which transportation projects should be considered Regionally Significant Projects (RSPs);

3.2.2.3 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;

3.2.2.4 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;

3.2.2.5 Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by 93.109(g)(2)(iii).

3.2.2.6 Consulting on emissions analysis for transportation activities which cross county and/or NPS, nonattainment area, or air basin boundaries;

3.2.2.7 Ensuring that plans for construction of RSPs, that are not FHWA-EFLHD/FTA projects, are disclosed to NCDOT on a regular basis and any changes to those plans disclosed in writing to NCDOT;

3.2.2.8 Process for consulting on the design, schedule, funding of research and data collection efforts, and regional transportation tool development by NCDOT;
3.2.2.9 Process for providing final documents and supporting information to each applicable Party after adoption or approval as defined in Section 2.1.10;

3.2.2.10 Latest planning assumptions for developing emission factors for the conformity analysis;

3.2.2.11 Projects without a determined design concept and scope shall be discussed at the Interagency Consultation; and

3.2.2.12 Parties must agree on sufficient details of the design concept and scope for the project to be included in the conformity analysis and determination.

3.2.3 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 and NCDOT. NCDEQ shall submit (at the Interagency Consultation Conformity Determination Meeting) a list of the TCMs, which are in the applicable implementation plan and their SIP schedules, to be included in the STIP.

3.2.4 Scheduling Implementation -- NCDEQ or its designee (at the request of NCDOT) shall provide the emission factors to NCDOT within a time agreed upon during the interagency consultations and to allow NCDOT 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 2.1.1.
4.0 CONFORMITY ANALYSIS RESULTS AND REPORTING

The 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 STIP is proposed, 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.

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, NCDOT shall provide public review and comments of the draft report in accordance with NCDOT's public participation policies and procedures. NCDOT shall not make 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.

4.1 DOCUMENTATION OF CONFORMITY ANALYSIS

The conformity analysis shall document all assumptions and relevant information used to determine the impact of projects from the TIP or FHWA-EFLHD/FTA project on travel and emissions in the nonattainment/maintenance area.

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

4.1.1 Forecasts of population, households, and employment in the analysis;

4.1.2 Mobile model inputs and outputs needed to develop road network emissions modeling results; and

4.1.3 VMT and average speed for each federal functional classification.

4.2 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 NCDOT’s Unified Public Engagement Process and 23 CFR 450.316(a) and 40 CFR 93.105(e). 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.

4.2.1 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 NCDOT.
4.2.2 Evaluation of Comments from the Parties -- If the Parties disagree with the conclusions of the analysis, NCDOT 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.

4.2.3 NCDOT shall maintain procedures for public involvement in the conformity determination process consistent with its Unified Public Engagement Process including receiving and responding to public input on conformity findings, consistent with 23 CFR 450.316(a) and 40 CFR 93.105(e).

5.0 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.

5.1 RESOLUTION OF CONFLICTS AT THE STATE LEVEL

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

5.1.1.1 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

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.
5.1.2 **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 NCDOT
NCDEQ -- The Secretary of NCDEQ

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.

5.1.2 **Conflicts Arising After NCDOT Regional Conformity Determination** -- After NCDOT has made its conformity determination by approval, NCDEQ may appeal said conformity determination 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 Secretary of NCDOT, the FHWA- EFLHD 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.

5.1.2.1 **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, the North Carolina Board of Transportation, or any agency that has responsibility for any one of these functions.

If NCDEQ does not appeal to the Governor within fourteen (14) days of NCDOT's notification of conformity on the TIP, the NCDOT may continue submission of its conformity determination to USDOT for their final review and conformity determination. NCDOT does not have to make conformity determinations on projects.
6.0 MODIFICATIONS AND RENEWAL OF AGREEMENT

6.1 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.

6.2 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:

6.2.1 Change information that is readily available to the public, such as when an organization or position is renamed;

6.2.2 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

6.2.3 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.
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on this the 15th day of February, 2021.

NCDOT

By: ________________________________

Name: ________________________________

Title: Secretary, NCDOT
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on this the __________ day of __________, 2021.

NCDEQ
By: __________________________
Name: Sheila C. Holman
Title: Assistant Secretary for the Environment
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 __________, 2021.

FHWA

By: __________________________
Name: John F. Sullivan III
Title: Division Administrator
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on this the 9th day of March, 2021.

FTA

By: _______________________________

Name: Yvette Taylor PhD

Title: Regional Administrator
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on this the __________ day of ______________, 2020.

NPS

By: ________________

Name: Chris Allsop

Title: Associate Regional Director
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on this the ____________ day of ____________, 2020.

NPS

By: _______________________________
Name: _______________________________
Title: _______________________________

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