

# Agenda Item Form

Agenda Date: 8-17-04

Districts Affected: N/A

Dept. Head/Contact Information: Mr. Roy Gilyard, 591-9735 x 10

## Type of Agenda Item:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution            | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements       | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use     | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements            | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input type="checkbox"/> Other _____                      |   |  |

## Funding Source:

- General Fund  
 Grant (duration of funds: 72 Months)  
 Other Source: \_\_\_\_\_

## Legal:

- Legal Review Required      Attorney Assigned (please scroll down): Kevin Elkins       Approved       Denied

Timeline Priority:  High       Medium       Low      # of days: \_\_\_\_\_

## Why is this item necessary:

This agreement provides for the MPO office operational funds.

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

This agreement will allow the MPO to receive transportation planning funds from NMDOT to conduct regional transportation planning in the City of Sunland Park, NM. The NMDOT agrees to reimburse the MPO for tasks that are identified yearly in the MPO's Unified Planning Work Program and the MPO agrees to perform said tasks outlined in the UPWP. Tasks can be administration assistance relating to applying for grants, conducting special studies, conducting traffic counts, transportation modeling, coordination etc.

## Statutory or Citizen Concerns:

None known.

## Departmental Concerns:

The Metropolitan Planning Organization (MPO) is requesting that the Mayor be authorized to sign a First Amendment to the Memorandum of Agreement approved by City Council on January 13, 2004, between the New Mexico Department of Transportation (NMDOT) and the City of El Paso (City), as the fiscal agent for the Metropolitan Planning Organization and that the Mayor is hereby authorized to execute any necessary budget transfers to accomplish the intent of this Resolution.

The agreement will allow the MPO to receive transportation planning funds from NMDOT to conduct regional transportation planning in the City of Sunland Park, NM. The NMDOT agrees to reimburse the MPO for tasks that are identified yearly in the MPO's Unified Planning Work Program and the MPO agrees to perform said tasks outlined in the UPWP. Tasks can be administration assistance relating to applying for grants, conducting special studies, conducting traffic counts, transportation modeling, coordination etc.

## METROPOLITAN PLANNING ORGANIZATION (MPO) OFFICE

### MEMORANDUM

DATE: August 12, 2004

TO: Mayor Joe Wardy and City Council Representatives

FROM:   
Roy Gilyard, Executive Director of the MPO Office

SUBJECT: City Council Agenda – August 17, 2004 - Resolution

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The Metropolitan Planning Organization (MPO) is requesting that the Mayor be authorized to sign a First Amendment to the Memorandum of Agreement approved by City Council on January 13, 2004, between the New Mexico Department of Transportation (NMDOT) and the City of El Paso (City), as the fiscal agent for the Metropolitan Planning Organization and that the Mayor is hereby authorized to execute any necessary budget transfers to accomplish the intent of this Resolution.

The agreement will allow the MPO to receive transportation planning funds from NMDOT to conduct regional transportation planning in the City of Sunland Park, NM. The NMDOT agrees to reimburse the MPO for tasks that are identified yearly in the MPO's Unified Planning Work Program and the MPO agrees to perform said tasks outlined in the UPWP. Tasks can be administration assistance relating to applying for grants, conducting special studies, conducting traffic counts, transportation modeling, coordination etc.

If you have any questions, please do not hesitate to contact me at (915) 591-9735, Ext. 13.

Thank you.

cc: Jim Martinez, CAO  
Laura Uribarri, Executive Assistant to the Mayor  
Lisa Elizondo, City Attorney  
Kevin Elkins, Assistant City Attorney

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the Mayor be authorized to sign a First Amendment to the MEMORANDUM OF AGREEMENT approved by City Council on January 13, 2004, between the New Mexico Department of Transportation ("NMDOT") and the City of El Paso ("City"), as the fiscal agent for the Metropolitan Planning Organization; and that the Mayor is hereby authorized to execute any necessary budget transfers to accomplish the intent of this Resolution.

**ADOPTED this 17<sup>th</sup> day of August, 2004.**

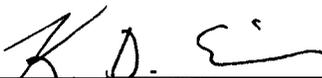
THE CITY OF EL PASO

\_\_\_\_\_  
Joe Wardy  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

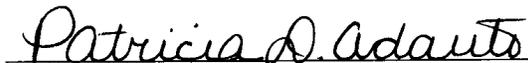
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kevin D. Elkins  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Roy Gilyard, Executive Director  
Metropolitan Planning Organization

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia D. Adauto  
Deputy Chief Administrative Officer  
for Building & Planning Services

Contract No. M00352/1  
Vendor No. 5332690  
Project No. PL-92A-5(41)  
Control No. 7692

**FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW MEXICO DEPARTMENT OF TRANSPORTATION  
AND THE  
CITY OF EL PASO METROPOLITAN PLANNING ORGANIZATION  
FOR A  
UNIFIED PLANNING WORK PROGRAM**

**THIS FIRST AMENDMENT ("AMENDMENT") to MEMORANDUM OF AGREEMENT M00352 ("MOA") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "NMDOT", and the CITY OF EL PASO as the fiscal agent for the METROPOLITAN PLANNING ORGANIZATION (MPO) and the Transportation Policy Board as the transportation policy setting body of the MPO, hereinafter referred to as "MPO", and herein referred to collectively as the "PARTIES".**

**RECITALS**

**WHEREAS, the NMDOT and MPO entered into MOA M00352 for the UNIFIED PLANNING WORK PROGRAM ("Agreement") on February 5, 2004 and made part of this First Amendment M00352/1, and,**

**WHEREAS, Page 11, Section Twenty-Four, Paragraph One, of the original MOA provides that the MOA can be amended with the prior written consent of the Parties, and,**

**WHEREAS, for the purposes of administration and execution of this Amendment, Project Number PL-92A-1(40), Control Number 7657, under MOA (M00352) involving this Program is re-designated to mean and be Project Number PL-92A-5(41), Control Number 7692, and,**

**NOW, THEREFORE, it is agreed by the NMDOT and the MPO that MEMORANDUM OF AGREEMENT M00352 BE AMENDED AND MODIFIED AS FOLLOWS:**

1. Section Three – Scope of Project: Page 3, Paragraph 1, lines six - seven strike the following letters and numbers " PL-92A-1(40), Control No. 7657" and insert

the following new letters and numbers "PL-92A-5(41), Control No. 7692" in lieu thereof;

2. Section Thirteen – Principal Contacts: Page 7, Paragraph 1, line 2, strike the following name "Dan Stover" and insert the following new name "Greg White" in lieu thereof, in the same paragraph, line 3, strike the following words "Regional Planning Section" and insert the following new words "Long Range Planning Section" in lieu thereof;
3. Section Twenty-Four -- Termination: Page 11, Paragraph 1, insert the following new Section Twenty-Four,

"The NMDOT has the option of canceling this Agreement by giving thirty (30) days written notice to the MPO. Upon receipt of the "Notice of Cancellation", the MPO shall immediately suspend any further work unless otherwise directed by the NMDOT in writing and terminate for its convenience any subcontracts, which the MPO may have awarded hereunder. Notwithstanding such termination both parties shall honor obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination of this Agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

Either party may terminate the Agreement for cause based upon any material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, the breaching party has not begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effectively immediately. The non-breaching party shall retain any and all other remedies available to it under law."

8. Section Twenty-Five – Amendment: Page 11, strike this Section Number "Twenty-Four" and insert the following new Section Number "Section Twenty-Five" in lieu thereof.

Except for the above Amendments, the First Amendment M00352/1 to original Memorandum of Agreement M00352 and its terms and conditions shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have set their hands and seals this day and year set forth below.

**NEW MEXICO DEPARTMENT  
OF TRANSPORTATION**

By: \_\_\_\_\_  
**Cabinet Secretary or Designee**

Date: \_\_\_\_\_

**EL PASO METROPOLITAN  
PLANNING ORGANIZATION**

By: \_\_\_\_\_  
**Chairperson, Transportation Policy Board**

Date: \_\_\_\_\_

**CITY OF EL PASO**

\_\_\_\_\_  
Joe Wardy  
Mayor

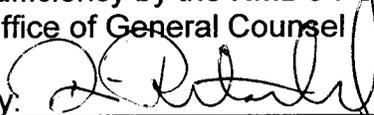
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

(Signatures continue on Page 4)

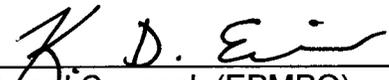
(Signatures continued from Page 3)

Approved as to legal form and  
sufficiency by the NMDOT'S  
Office of General Counsel

By:   
Deputy General Counsel

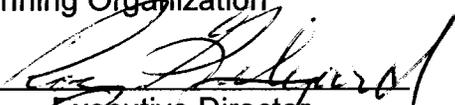
Date: 7-15-04

Approved as to form by the  
Office of the El Paso Metropolitan  
Organization's Office of Legal Counsel

By:   
Legal Counsel (EPMPO)

Date: 8-12-04

Approved as to content by the  
Office of the El Paso Metropolitan  
Planning Organization

By:   
Executive Director

Date: 8-12-04

Approved as to content by the Office  
of the Deputy Chief Administrative  
Officer For Building & Planning Services

By:   
Deputy Chief Administrative Officer

Date: 8/12/04

(Signatures continued on Page 5)

(Signatures continued from Page 4)

Approved as to form by the  
City of El Paso's Office of  
Legal Counsel

By: K. D. C.  
Legal Counsel

Date: 8-12-04

Contract No. M00352  
Vendor No. 5332690  
Project No. PL-92A-1(40)  
Control No. 7657

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW MEXICO DEPARTMENT OF TRANSPORTATION  
AND THE  
CITY OF EL PASO METROPOLITAN PLANNING ORGANIZATION  
FOR A  
UNIFIED PLANNING WORK PROGRAM**

**THIS MEMORANDUM OF AGREEMENT, ("MOA") and hereinafter referred to as "MOA" is made and entered into this 5th day of February, 2004 by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "NMDOT", and the CITY OF EL PASO as the fiscal agent for the METROPOLITAN PLANNING ORGANIZATION (MPO) and the Transportation Policy Board as the transportation policy setting body of the MPO hereinafter referred to as the "MPO", and hereinafter referred to collectively as the "PARTIES".**

**RECITALS**

**WHEREAS**, each is a public agency and empowered to enter into this MOA, and,

**WHEREAS**, the City of El Paso as the Metropolitan Planning Organization and State of New Mexico entered into a Joint Powers Agreement on January 13, 1996 (J00118/1) to participate in a joint project for the administrative and technical planning activities to implement and execute metropolitan urban and rural transportation planning process authorized by the New Mexico Joint Powers Agreement Act, NMSA, 1978, Sections 11-1-1 to 11-1-7, as amended, and Texas Rev. Civ. Stat. Ann., art 6663, and,

**WHEREAS**, on August 30, 1988, the Governor of the State of Texas designated the CITY OF EL PASO as the Metropolitan Planning Organization (MPO) pursuant to Section 112 of the Federal Highway Act of 1973. This results in the MPO being responsible, together with the State, for carrying out the provisions of Title 23 United States Code; Titles 23 USC, 134 and Title 23 USC 104(f)(3), 49 USC 5303 and 23 Code of Federal regulations (23 CFR, 450), and,

**WHEREAS**, the "MPO" has been designated as the Transportation Policy Board structure established pursuant to Section 134 of Chapter 1 of Title 23 USC

and the **CITY OF EL PASO** serving as the Fiscal Agent for the Transportation Policy Board of the MPO, and,

**WHEREAS**, Title 23 U.S.C. Section 134, Metropolitan Planning, and Title 49 U.S.C. Section 5303, Metropolitan Planning, authorize federal assistance for the development of transportation plans and programs by way of a grant program to be administered by each state, and,

**WHEREAS**, the Governor of New Mexico has designated the **NMDOT** to receive and administer the federal funds under these programs, and,

**WHEREAS**, the **NMDOT**, under the authority granted by NMSA 1978, Section 67-3-1 et seq., and the **MPO** desire to enter into and execute an Agreement for the purpose of implementing a Title 23 U.S.C. Section 134 and 49 U.S.C. Section 5303 Project for federal reimbursement, and,

**WHEREAS**, the Parties are in agreement, the **MPO**, in cooperation with the **NMDOT**, will engage in a comprehensive, continuing and cooperative transportation planning process under the provisions of 23 U.S.C. 134, 49 U.S.C. 5303, 23 C.F.R. 450 and other subsequent federal laws and applicable regulations issued by the DOT's modal administrations, and,

**WHEREAS**, the **NMDOT** is of the understanding that **MPO** has both expertise and capability to develop and implement a **UNIFIED PLANNING WORK PROGRAM ("UPWP")** that will serve as the framework for development of transportation plans and programs by filing an Unified Planning Work Program for such assistance, and said work program has been approved by the **NMDOT**, and the Texas DEPARTMENT OF TRANSPORTATION (TXDOT), and,

**WHEREAS**, it is necessary to execute this MOA to provide for better understanding of each Party's responsibilities, agreed upon terms by the Parties to this MOA, and allow sufficient time for completion of the Project.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND REPRESENTATIONS IN THIS MOA, THE PARTIES AGREE AS FOLLOWS:**

**SECTION ONE -- ACRONYMS AND DEFINITIONS:**

- **DOT** – In the context of this Agreement is the Federal department of Transportation, an agency of the Executive Branch of the United States Government.
- **NMDOT** – In the context of this Agreement is the New Mexico Department of Transportation, an agency of the State Government.
- **FHWA** – Federal Highway Administration, created in 1967 and authorized under Title 23 of U.S. Code to administer programs involving Federal-Aid, Federal Lands, research and development, international outreach, and National Highway Institute programs.

- **FTA** -- Federal Transit Administration, created in 1991 and authorized under Title 49 of U.S. Code to administer programs to provide financial assistance to develop new transit systems and improve, maintain, and operate existing systems.
- **ITS** – Intelligent Transportation Systems is the program established within TEA – 21 to accelerate integration, interoperability and deployment of commercial vehicle technologies and technology infrastructures that facilitate transportation.
- **Consultation** – means that one party confers with another identified party and, prior to taking action(s), considers that party's views in writing or verbal depending on the particular situation.
- **Cooperation** – means that the parties involved in carrying out the planning, programming and management systems processes work together to achieve a common goal or objective.
- **Coordination** – means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies or entities with legal standing, and adjustment of plans, programs and schedules to achieve general consistency.
- **MPO** – El Paso Metropolitan Planning Organization, created under Title 23 U.S.C. Section 134 for the purpose of transportation planning in metropolitan areas above 50,000 in population.
- **LRTP** – **Each of the State's Long Range Transportation Plan**, having a minimum 20-year forecast period that provides for the development and improvement of the State's inter-modal transportation system.
- **MTP** – Metropolitan Transportation Plan, having a minimum 20-year forecast period that provides for the development and improvement of the metropolitan inter-modal transportation system.
- **CMS** – Congestion Management System, a system for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies.
- **RPO** -- Regional Planning Organization, an organization created by the State Transportation Commission that identifies highway and transportation needs, then reviews, rates and prioritizes projects for recommendation by the NMDOT. Municipal, County and tribal entities form RPOS' and use a continuous, comprehensive and cooperative planning process to accomplish their purpose. Their component counties geographically define RPOS'.
- **RMPS** – NMDOT Regional and Metropolitan Planning Section, administers agreements and contracts and provides planning technical assistance to RPO/MPOS.
- **TIP** – Transportation Improvement Program, the approved three year listing of prioritized projects, within the MPO, detailed by funding categories and included in the STIP.
- **TPB** – Transportation Policy Board, elected and appointed officials responsible for approving all plans and programs required by TEA-21.
- **STIP** -- State Transportation Improvement Program, a multi-year planning document, of which the first 3 years represents the listing to transportation projects required under Title 23 U.S.C. Section 134 and 49 U.S.C. Section 5303.
- **Eligible Voting Participants** – within MPOS, include local, municipal, county, tribal entities and may include NMDOT representation.
- **Eligible Non-Voting Participants** – include the general public, state and federal agencies, and others with a transportation interest.

- **TEA 21** -- Transportation Equity Act for the 21st Century, is the transportation authorization bill passed by Congress in 1998, which authorizes highway, highway safety, transit and other surface transportation programs for the following six years.
- **UPWP** -- Unified Planning Work Program, an annual listing of activities that will be undertaken by the MPO.

**SECTION TWO -- PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to facilitate cooperation, collaboration, coordination, and communication between the parties; and to implement the FY2004 UNIFIED PLANNING WORK PROGRAM, provide funding, and effectuate the encumbering of \$27,619.19 FY2003 Metropolitan Planning FHWA funds. This Agreement is a joint and coordinated effort for which the NMDOT and EL PASO MPO each have authority or jurisdiction. This Agreement shall specify and delineate the rights and duties of the Parties hereto.

**SECTION THREE -- SCOPE OF THE PROJECT:**

The EL PASO MPO agrees to perform the activities identified in the FY 2004 UPWP. The EL PASO MPO will submit quarterly reports to the NMDOT describing progress on each of the activities in the UPWP. Quarterly performance of the UPW Program will be reported out relative to the annual requirements as specified by the UPWP. Major work elements in the FY2004 UPWP Products outline are delineated in Exhibit "A" and attached and made part of this MOA under Project No. PL-92A-1(40), Control No. 7657.

**SECTION FOUR -- EL PASO MPO DUTIES:**

1. Act in the capacity as the designated lead agency for the UPWP.
2. Abide by the EL PASO MPO'S Motion passed on July 27, 2003 in support of the Unified Planning Work Program For The El Paso Metropolitan Planning Area.
3. Assure the development of the annual FY2005 UPWP.
4. Coordinate the planning processes with the appropriate RPOS and the MPOS impacted by activities of the EL PASO MPO through the UPWP.
5. Coordinate EL PASO MPO activities and planning with appropriate local/regional organizations and or agencies involved with planning or transportation that will impact the UPWP.
6. Designate a point of contact for this program.
7. Assure all data collected under this Agreement is made available to the NMDOT upon request by the NMDOT.
8. Comply at all times with the New Mexico Open Meetings Act, NMSA 1978, Sections 10-51-1, and et. Seq., and other notice requirements as appropriate. Notification to the NMDOT'S RMPS shall be transmitted by E-Mail.
9. The EL PASO MPO shall take action on all written requests to the EL PASO MPO for all NMDOT changes affecting the TIP.

10. Provide for distribution of regular EL PASO MPO meeting agendas not later than 7 days prior to each meeting.

#### **SECTION FIVE - NMDOT DUTIES:**

1. Provide for the transfer of federal funding in support of the EL PASO MPO'S FY2004 UPWP.
2. Provide staff to:
  - a. Maintain liaison with EL PASO MPO,
  - b. Provide technical assistance concerning the development of the MTP, TIP, and UPWP,
  - c. Monitor work progress of the EL PASO MPO,
  - d. Coordinate NMDOT reviews and approvals of EL PASO MPO products,
3. Annually approve the EL PASO MPO'S UPWP when compliant.
4. Following the approval of the EL PASO MPO, the Governor, and after needed conformity findings have been made, include the TIP without modification in the STIP.
5. In cooperation and coordination with the EL PASO MPO, jointly certify to the FHWA, and FTA, compliance with federal requirements.
6. Ensure New Mexico State Transportation Commission Policy is followed.
7. Assure participation by the New Mexico District Engineer in the project prioritization process.
8. Provide a written request to the EL PASO MPO for all NMDOT changes and modifications affecting the TIP. Unless otherwise agreed to, requests for such action shall be provided in writing not later than twenty days prior to EL PASO MPO Policy Board meeting for action expected on the request.
9. An annual consultation shall occur not later than thirty days following federal register publication, by the FHWA, of the state's annual appropriations. The NMDOT shall issue annually, an amendment to this Agreement specifying both the amount awarded to the EL PASO MPO and the federal and local match ratios required.
10. Provide technical assistance and coordination to EL PASO MPO with respect to federal and state laws and regulations, and NMDOT policies and directives with respect to transportation plans and programs. Regional recommendations shall effectively address both design and fiscal constraints while maximizing transportation system function and efficiency.

#### **SECTION SIX -- COST OF PROJECT:**

The estimated annual cost in total funding approved and designated for the EL PASO MPO Project is \$32,325.80 for FY2004. The NMDOT shall provide \$27,619.19 on a reimbursable basis in FY2003 FHWA Metropolitan Planning funds, and the EL PASO MPO shall provide \$4,706.64 in matching funds to cover expenses of the Project Budget, attached as Exhibit "B" and made part of this Agreement. The NMDOT shall not be responsible for any other costs of this Project. The EL PASO MPO shall initiate and complete all actions necessary to fulfill its obligation for the UPWP.

**SECTION SEVEN – METHOD OF PAYMENT:**

The NMDOT shall reimburse the EL PASO MPO for the Federal share of the eligible expenses upon receipt of invoices, with sufficient supporting documentation as determined and/or approved by the NMDOT, indicating that expenses have been paid. Such invoices shall be submitted on a monthly basis, to be received by the NMDOT by the 25th day of the month following close of the invoice period. Invoices shall have a certification by the EL PASO MPO that the invoices accurately reflect work completed, amount due, remaining contract balance and contract number. All expenses must be actual rather than estimated and must be listed on the invoices as charged. Only those expenses properly documented and deemed eligible will be reimbursed under this project.

**SECTION EIGHT– REPORTING:**

The EL PASO MPO shall submit Quarterly status reports to the NMDOT after the end of each quarter but no later than October 25, January 25, April 25, and August 25. At a minimum, the quarterly report shall indicate the current and cumulative status of the work program elements with respect to the activities undertaken and funds expended.

**SECTION NINE – ELIGIBLE COSTS:**

Eligible costs are those costs attributable to the Project and which are allowable under the approved Project Budget and the provisions of:

1. OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments", and any amendments thereto.
2. Office of Management and Budget (OMB) Circular A-102, "Uniform Administration Requirements for Grants-in-Aid to State and Local Governments", and any amendments thereto.
3. OMB Circular A-110 or A-128, "Audit Requirements", and any amendments thereto.

All costs must be supported by properly executed invoices, vouchers, warrants, and any other documentation required by the above regulations evidencing that those costs were specifically incurred in the performance of this Agreement. This documentation shall be clearly identified and readily accessible.

**SECTION TEN – STATE GENERAL APPROPRIATION FUNDS NOT TO BE OBLIGATED:**

Nothing herein shall be construed as obligating state general appropriation funds for payment of any debt or liability of any nature arising hereunder. The Parties expressly recognize that all payments will be made by the NMDOT solely from

federal funds made available to the NMDOT for said purpose(s) unless otherwise stipulated.

**SECTION ELEVEN -- APPROPRIATIONS AND AUTHORIZATIONS:**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, or the Congress of the United States if Federal funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Legislature, or the Congress of the United States, if federal funds are involved, this Agreement shall terminate upon written notice given by the NMDOT to EL PASO MPO. The NMDOT is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the NMDOT. The NMDOT'S decision as to whether its funds are available shall be accepted by EL PASO MPO and shall be final. Upon written notification from NMDOT that funds are not available, the EL PASO MPO will cease any and all work programs undertaken as described in this agreement, and this agreement will terminate without further action from either of the parties.

**SECTION TWELVE -- ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS/RECORDS AND AUDIT:**

The EL PASO MPO agrees to maintain all books, papers, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the State.

**SECTION THIRTEEN -- PRINCIPAL CONTACTS**

The principal contacts for this MOA or successors to principal contacts or their designees:

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

Dan Stover, Supervisor  
Regional Planning Section (SB-1, N)  
New Mexico NMDOT of Transportation  
P.O. Box 1149  
Santa Fe, NM 87504-1149  
505-827-0050

**CITY OF EL PASO**

Patricia D. Adauto, Deputy CAO - Building & Planning Services  
City of El Paso  
2 Civic Center Plaza

El Paso, Texas 79901-1196  
915-541-4853

**EI PASO METROPOLITAN PLANNING ORGANIZATION**

Roy Gilyard, Executive Director  
El Paso Metropolitan Planning Organization  
10767 Gateway Blvd. West, Suite 605  
El Paso, Texas 79935  
915-591-9750

**SECTION FOURTEEN -- COMPLIANCE WITH LAWS, RULES AND REGULATIONS:**

The EL PASO MPO shall comply with all Federal, State and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement and the work hereunder. All Federal and State regulations, laws and documents referenced in this Agreement shall be considered as incorporated by reference as if fully written herein. It is understood that funding for this MOA is contingent upon EL PASO MPO following applicable Procurement Code Requirements including applicable Rules and Regulations. This Agreement includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding agreement provisions. All applicable provisions required by DOT are hereby incorporated by reference. Notwithstanding anything to the contrary herein, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. EL PASO MPO shall not perform any act, fail to perform any act, or refuse to comply with any NMDOT requests that would cause the NMDOT to be in violation of the DOT terms and conditions.

**SECTION FIFTEEN -- EQUAL OPPORTUNITY COMPLIANCE:**

The NMDOT and EL PASO MPO agree to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance therewith, the NMDOT and EL PASO MPO agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the NMDOT or EL PASO MPO is found to be not in compliance with these requirements during the term of this Agreement, the NMDOT or EL PASO MPO agree to take appropriate steps to correct these deficiencies upon written notification from the other party as to the non-compliance issues.

**SECTION SIXTEEN – CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:**

The NMDOT and EL PASO MPO shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The NMDOT and EL PASO MPO further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the NMDOT of Labor Regulations (41 CFR Part 60). Accordingly, 49 CFR Part 21 is applicable to this Agreement and incorporated herein by reference.

**SECTION SEVENTEEN -- DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND POLICY:**

The parties to this Agreement shall comply with all applicable provisions of Title 49 Code of Federal Regulations Part 26 (49 CFR 26) or as it may be amended, concerning Disadvantaged Businesses.

**SECTION EIGHTEEN -- NEW MEXICO TORT CLAIMS ACT:**

As between the parties hereto, each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended and Texas Civil Practice and Remedies Code, Sections 101.001 – 101.024 (2002).

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred as a result of the other party's acts or omissions in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended and Texas Civil Practice and Remedies Code, Sections 101.001 – 101.024 (2002). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The EL PASO MPO and its "public employees" as defined in the New Mexico Tort Claims Act, and the NMDOT and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION NINETEEN -- THIRD PARTY BENEFICIARY CLAUSE:**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage to property(is), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**SECTION TWENTY -- CONSENT TO JURISDICTION AND VENUE:**

The State of New Mexico and City of El Paso, acknowledge that neither state or city is an agent, servant, or employee of the other city or state, and that each is wholly and solely responsible for its own acts and omissions and those of its respective agents or employees during the performance of agreement work. The Parties hereby consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from this agreement which cannot be resolved informally and the Parties hereby waive any object to the personal jurisdiction of the Courts of the State of New Mexico over the Parties. It is expressly understood and recognized by the Parties hereto that venue for litigation of issues, claims, or all other judicial matters arising or resulting from this agreement shall be in the Santa Fe County District Court.

**SECTION TWENTY-ONE -- SEVERABILITY:**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**SECTION TWENTY-TWO -- SCOPE OF THE AGREEMENT:**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**SECTION TWENTY-THREE -- EFFECTIVE DATE AND TERM:**

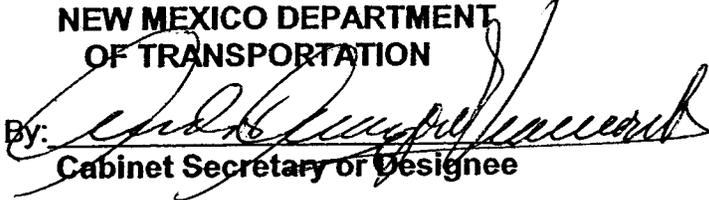
This Agreement shall not be effective until executed by the Secretary of the NMDOT or her designee. The term of this Agreement is from the Official Date of Entry of the Agreement and shall terminate on December 31, 2007, unless terminated pursuant to the terms and conditions of this MOA.

**SECTION TWENTY-FOUR -- AMENDMENT:**

This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

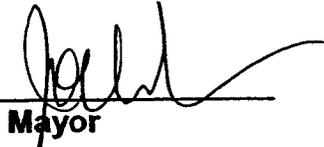
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates specified below.

**NEW MEXICO DEPARTMENT  
OF TRANSPORTATION**

By:   
Cabinet Secretary or Designee

Date: 2-5-04

**CITY OF EL PASO**

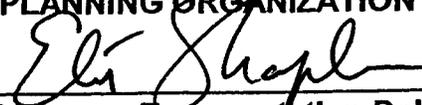
BY:   
Mayor

Date: 01-13-04

**ATTEST:**

  
Richarda Duffy Momsen  
City Clerk

**EL PASO METROPOLITAN  
PLANNING ORGANIZATION**

By:   
Chairperson, Transportation Policy Board

Date: \_\_\_\_\_

(Signatures continued on Page 12)

(Signatures continued from Page 11)

Approved as to form and legal  
sufficiency by the NMDOT'S  
Office of General Counsel)

By: *Lyndell E. Kerner*  
Deputy General Counsel

Date: 11-17-03

Approved as to form by the  
Office of El Paso Metropolitan  
Organization's Office of Legal Counsel

By: *K. D. Elkins*  
Legal Counsel (EPMPO)

Date: 1-9-04

Approved as to content by the  
Office of El Paso Metropolitan  
Planning Organization

By: *Roy L. Lyman*  
Executive Director

Date: 11-21-03

APPROVED AS TO CONTENT

*Patricia D. Adauto*  
PATRICIA D. ADAUTO  
DEPUTY CHIEF ADMINISTRATIVE OFFICER  
FOR BUILDING & PLANNING SERVICES

Approved as to form by the City of  
El Paso's Office of General Counsel

By: *K. D. Elkins*  
Legal Counsel, K. D. Elkins

Date: 1-9-04