

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** MPO

**AGENDA DATE:** August 28, 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** Roy Gilyard, 591-9735 x 13

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

That the Mayor be authorized to sign the 2012 Planning Agreement by and between the State of Texas, acting through the Texas Department of Transportation (TxDOT) and the City of El Paso, Texas, acting in its capacity as the fiscal agent for the El Paso Metropolitan Planning Organization (MPO).

**BACKGROUND / DISCUSSION:**

This agreement provides the necessary knowledge of and references to federal and state laws, regulations, and rules that pertain to the metropolitan transportation planning process. It describes the various responsibilities of the Texas Department of Transportation and the El Paso Metropolitan Planning Organizations.

**PRIOR COUNCIL ACTION:**

None

**AMOUNT AND SOURCE OF FUNDING:**

Zero dollar amount. Fund 05043, Grant G781202, Dept. ID 68150009, No budget transfer required.

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**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

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

That the Mayor be authorized to sign the 2012 Planning Agreement by and between the State of Texas, acting through the Texas Department of Transportation (TxDot) and the City of El Paso, Texas, acting in its capacity as the fiscal agent for the El Paso Metropolitan Planning Organization (MPO).

**ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2012.**

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

**STATE OF TEXAS     §**

**COUNTY OF TRAVIS   §**

**AGREEMENT WITH METROPOLITAN PLANNING ORGANIZATION**

**THIS AGREEMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, called the "Department," the Transportation Policy Board for the El Paso Metropolitan Planning Organization (MPO), called the "MPO Transportation Policy Board", and the City of El Paso, which serves as the Fiscal Agent for the MPO.

**WITNESSETH**

**WHEREAS**, 23 United States Code (USC) §134 and 49 USC §5301 et seq. require that MPOs, in cooperation with the Department and transit agencies, develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, 23 USC §104(f) authorizes Metropolitan Planning funds and 49 USC §5301 et seq. authorizes funds to be made available to MPOs designated by the Governor to support the urban transportation planning process; and

**WHEREAS**, the federal share payable for authorized activities using 49 USC §5303 and Metropolitan Planning funds is eighty percent (80%) of allowable costs; and

**WHEREAS**, Texas Transportation Code §221.003 authorizes the Department to expend federal and state funds for improvements to the state highway system; and

**WHEREAS**, Texas Transportation Code § 201.703 authorizes the Department to expend federal funds and to provide state matching funds for allowable costs necessary for the improvement of roads not in the state highway system; and

**WHEREAS**, Metropolitan Planning funds, and other federal transportation funds that may be used for planning (e.g., Surface Transportation Program, National Highway System, Congestion Mitigation and Air Quality, etc.) and 49 USC §5303 funds are to be used in conjunction with work conducted under the terms of this agreement; and

**WHEREAS**, the Governor of the State of Texas has designated the El Paso MPO as the MPO for the above-mentioned urbanized area; and

**WHEREAS**, the Governor of the State of Texas and the City of El Paso have executed an agreement pursuant to the MPO designation; and

**WHEREAS**, an area equal to or larger than the above-mentioned urbanized area has been delineated in accordance with federal and state guidelines where required metropolitan transportation planning activities may take place; and

**WHEREAS**, 23 Code of Federal Regulations (CFR) 420.117(a) requires that in accordance with 49 CFR §18.40, the Department shall monitor all activities performed by its staff or by sub-recipients with Federal Highway Administration (FHWA) planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met; and

**WHEREAS**, the City of El Paso and the Governor of Texas established the Transportation Policy Board to serve as the independent policy body for regional transportation decision-making in the El Paso Urbanized Area; and

**WHEREAS**, The Transportation Policy Board is the policy body established pursuant to 23 U.S.C. §134 with the responsibility for determining overall regional transportation policy for the El Paso Metropolitan Planning Organization, and is comprised of those governmental agencies identified in the original designation agreement and those agencies or organizations subsequently added to the membership of the Board; and

**WHEREAS**, the City of El Paso as the MPO serves as the fiscal agent and is responsible for providing staff support services to the MPO's Transportation Policy Board and other responsibilities as listed in the Operational Agreement between the TPB and the City of El Paso and as may be amended; and

**NOW THEREFORE**, it is agreed as follows:

## **A G R E E M E N T**

### **Article 1. Agreement Period**

- A.** This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. The Department shall not continue its obligation to the MPO under this agreement if the Governor's designation of the MPO is withdrawn; if federal funds cease to become available; or if the agreement is terminated as provided below.
- B.** This agreement expires on September 30, 2018. No fewer than one hundred and twenty (120) days before the expiration date, the Department may, at its sole discretion, exercise in writing an option to extend the agreement by a period of no more than two (2) years. The Department may exercise this option no more than two (2) times. If all terms and conditions of this agreement remain viable and no amendment to the existing

agreement or new agreement is required, a letter from the Department to the MPO shall constitute renewal of this agreement subject to all terms and conditions specified in this agreement. However, an amendment or a new agreement may be executed, if necessary.

## **Article 2. Responsibilities of the Department**

The responsibilities of the Department are as follows:

- A.** Make available to the MPO all of the appropriate federal transportation planning funds and provide required non-federal, in-kind matching funds as authorized by the Texas Transportation Commission. Federal transportation planning funds will be distributed to the MPOs based on formulas mutually agreed upon by the Department, the FHWA, and the Federal Transit Administration (FTA). The Department will consult with the Association of Texas Metropolitan Planning Organizations (TEMPO) before agreeing on a formula.
- B.** Provide to the MPO, as appropriate, technical assistance and guidance for the collection, processing, and forecasting of socio-economic data needed for the development of traffic forecasts, plans, programs, and planning proposals within the metropolitan area.
- C.** Collect, process, and forecast vehicular travel volume data in cooperation with the MPO, as appropriate.
- D.** Jointly promote the development of the intermodal transportation system within the metropolitan area by identifying points in the system where access, connectivity, and coordination between the modes and inter-urban facilities would benefit the entire system.
- E.** Share with the MPO information and information sources concerning transportation planning issues that relate to this agreement.

## **Article 3. Responsibilities of the MPO**

The MPO is an organization created to ensure that existing and future expenditures on transportation projects and programs are based on a continuing, cooperative, and comprehensive planning process. The responsibilities of the MPO are as follows:

- A.** Use funds provided in accordance with Article 2, A, (Responsibilities of the Department) of this agreement to develop and maintain a comprehensive regional transportation planning program in conformity with the requirements of 23 USC §134(f), 49 USC §5303, and the state's Uniform Grant Management Standards (UGMS) found at the web address [www.governor.state.tx.us/files/state-grants/UGMS062004.doc](http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc).
- B.** Assemble and maintain an adequate, competent staff with the knowledge and experience that will enable them to perform all appropriate MPO activities required by law.
- C.** Collect, maintain, and forecast appropriate socio-economic, roadway, and travel data on a timely basis, in cooperation with the Department.
- D.** Prepare all required plans, programs, reports, data, and obtain required certifications in a timely manner.

- E. Develop a Metropolitan Transportation Plan (MTP), a Transportation Improvement Program (TIP), and a Unified Planning Work Program (UPWP) for the Metropolitan Planning Area (MPA) that are consistent with the Statewide Long-Range Transportation Plan (SLRTP), as required by the state and federal law. At a minimum, the MPO shall consider in their planning process the applicable factors outlined in 23 USC §134(f).
- F. Share information and information sources concerning transportation planning issues.

#### **Article 4. Responsibilities of the MPO Transportation Policy Board**

The MPO Transportation Policy Board is the policy body that is the forum designated under 23 USC §134 with the responsibility for establishing overall transportation policy for the MPO and for making required approvals. The MPO Transportation Policy Board is comprised of those governmental agencies identified in the original designation agreement and those agencies or organizations subsequently added to the membership of the committee. The responsibilities of the MPO Transportation Policy Board are as follows:

- A. Ensure that requirements of 23 USC §§134 and 135 and 49 USC, Chapter 53, are carried out.
- B. Use funds provided in accordance with Article 2, A, (Responsibilities of the Department) of this agreement to develop and maintain a comprehensive regional transportation planning program in accordance with requirements of 23 USC §134(f) and 49 USC §5303.
- C. Develop and adopt an MTP for the MPA that is consistent with the SLRTP required by state and federal laws; a TIP and a UPWP; and other planning documents and reports that may be required by state or federal laws or regulations.
- D. Exercise sole responsibility to hire, supervise, evaluate, and terminate the MPO Transportation Planning Director.
- E. Provide planning policy direction to the MPO Transportation Planning Director.

#### **Article 5. Responsibilities of the Fiscal Agent**

The Fiscal Agent for the MPO is the entity responsible for providing fiscal, human resource, and staff support services to the MPO. The responsibilities of the fiscal agent are as follows:

- A. Maintain required accounting records for state and federal funds consistent with current federal and state requirements.
- B. Provide all appropriate funding, as identified by fiscal year in the UPWP, to allow the MPO staff to effectively and efficiently operate the program.
- C. Provide human resource services to the MPO.
- D. Provide benefits for the MPO staff that shall be the same as the fiscal agent normally provides its own employees; or as determined through an agreement between the MPO Transportation Policy Board and the fiscal agent. Costs incurred by the fiscal agent for these benefits may be reimbursed by the MPO.
- E. Establish procedures and policies for procurement and purchasing, when necessary, in cooperation with the MPO Transportation Policy Board.

#### **Article 6. Responsibilities of the MPO Transportation Planning Director**

The responsibilities of the MPO Transportation Planning Director are as follows:

- A. Administer the MPO's UPWP. The Director shall serve in a full-time capacity for Transportation Management Areas and shall take planning policy direction from and be responsible to the designated MPO Transportation Policy Board.
- B. Act as a liaison, relevant to the Department's transportation planning activities, with the Department's district and region offices and the Department's Transportation Planning and Programming Division's representative.
- C. Oversee and direct all MPO transportation planning staff work performed using MPO funds.
- D. Prepare and submit all required plans, programs, reports, data, and certifications in a timely manner.
- E. Develop and present to the MPO Policy Board an MTP for the MPA that is consistent with the SLRTP required by state and federal laws; a TIP and a UPWP; and other planning documents and reports that may be required by state or federal laws or regulations.
- F. Share information and information resources concerning transportation planning issues.

#### **Article 7. Unified Planning Work Program**

- A. Each year the MPO shall submit to the Department a program of work that includes goals, objectives, and tasks required by each of the several agencies involved in the metropolitan transportation planning process. This program of work is to be called the Unified Planning Work Program (UPWP), or any successor name. The UPWP shall be approved by the MPO Transportation Policy Board, in accordance with 23 CFR §450.314(a)(1).
- B. The UPWP will be prepared for a period of two (2) years unless otherwise agreed to by the Department, the MPO, and the MPO Transportation Policy Board. The UPWP shall reflect only that work that can be accomplished during the time period of the UPWP, in accordance with 43 Texas Administrative Code (TAC) §16.52, 23 CFR §420.113(a)(5) and 23 CFR §420.115(a).
- C. The budget and statement of work will be included in the UPWP. The MPO may not incur costs until final approval of the UPWP is granted. The maximum amount payable will not exceed the budget included in the UPWP.
- D. The effective date of each UPWP will be October 1st of each year or the date of approval from the appropriate oversight agency, whichever occurs later. On that date, the UPWP shall constitute a new federal project and shall supersede the previous UPWP.
- E. The UPWP shall comply with all applicable federal and state requirements and will describe metropolitan transportation and transportation-related planning activities anticipated in the area.
- F. The UPWP shall reflect transportation planning work to be funded by federal, state, or local transportation, or transportation-related (e.g., air quality) planning funds.

- G.** The use of federal metropolitan transportation planning funds shall be limited to transportation planning activities affecting the transportation system within the Metropolitan Area Boundary (MAB). If an MPO determines that data collection and analysis activities relating to land use, demographics, or traffic or travel information conducted outside the MAB, affect the transportation system within the MAB, then those activities may be undertaken using federal planning funds, provided that the activities are specifically identified in an approved UPWP. Any other costs incurred for transportation planning activities outside the MAB will not be eligible for reimbursement.
- H.** Travel outside the State of Texas by MPO staff and other agencies participating in the MPO planning process shall be approved by the Department if funded with federal transportation planning funds. Approval must be received prior to incurring any costs associated with the actual travel (e.g., registration fee). This provision will not apply if the travel is at the request of the Department. Travel to the State of New Mexico by the El Paso MPO staff shall be considered in-state travel.
- I.** The cost of travel incurred by elected officials serving on the MPO Policy Board will be eligible for reimbursement with federal transportation planning funds in accordance with 43 TAC §16.52(b)(4).
- J.** The use of federal transportation planning funds shall be limited to corridor or subarea level planning or multimodal or system wide transit planning studies. Major investment studies and environmental studies are considered corridor level planning. The use of those funds beyond environmental document preparation or for specific project level planning and engineering (efforts directly related to a specific project instead of a corridor) is not allowed.
- K.** The Department, in consultation with TEMPO, will devise a timeline for development of the UPWP. Failure to adhere to the timeline may result in a delay in the authorization to the MPO to proceed with incurring costs.
- L.** The Department, in cooperation with TEMPO, shall develop a standard UPWP format to be used in accordance with 43 TAC §16.52(a)(3). A UPWP submitted in a different format will not be approved. The UPWP and subsequent amendments may be submitted electronically.
- M.** The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments prior to receiving written approval from the Department. Any costs incurred prior to receiving approval shall not be eligible for reimbursement from federal transportation planning funds.
- N.** If the individual work task cost exceeds the task budget by more than twenty-five percent (25%), the UPWP shall be revised, approved by the MPO and submitted to the Department for approval.
- O.** The MPO Transportation Policy Board shall not delegate approval authority of the UPWP or subsequent amendments, except for corrective actions. Corrective actions do not change the scope of work, result in an increase or decrease in the amount of task funding or affect the overall budget. Examples include typographical, grammatical, or syntax corrections.
- P.** Should any conflict be discovered between the terms of this agreement and the UPWP, the terms of this agreement shall prevail.

- Q. The MPO is not authorized to request payment for any work it may perform that is not included in the current UPWP.

### **Article 8. Compensation**

The Department's payment of any cost incurred under this agreement is contingent upon all of the following:

- A. Federal funds are available to the Department in a sufficient amount for making payments.
- B. The incurred cost is authorized in the UPWP. The maximum amount payable under this agreement shall not exceed the total budgeted amount outlined in the UPWP in accordance with 43 TAC §16.52(b)(7).
- C. The cost has actually been incurred by the MPO and meets the following criteria:
1. Is verifiable from MPO records;
  2. Is not included as match funds for any other federally-assisted program;
  3. Is necessary and reasonable for the proper and efficient accomplishment of program objectives;
  4. Is the type of charge that would be allowable under OMB Circular A-87 Revised, "Cost Principles for State, Local, and Indian Tribal Governments" and the state's UGMS; and
  5. Is not paid by the Department or federal government under another assistance program unless authorized to be used as match under the other federal or state agreement and the laws and regulations to which it is subject.
- D. After October 1st of each year, the Department will issue a work order to the MPO establishing the effective date of work and the total funds authorized. If the UPWP is subsequently revised, necessitating a revision to the original work order, or the Department deems a revision necessary, a revised work order may be issued at any time throughout the fiscal year. If the amount in the UPWP differs from the amount in the work order, the amount in the work order prevails.
- E. The MPO is authorized to submit requests for payment of authorized costs incurred under this agreement on a semi-monthly basis, but no more than twenty four (24) times a year and no less than monthly as expenses occur. Each request for payment shall be submitted in a manner acceptable to the Department, which includes, at a minimum, the following information:
1. UPWP budget category or line item;
  2. Description of the cost;
  3. Quantity;
  4. Price;
  5. Cost extension; and
  6. Total costs
- F. The MPO shall submit the final bill from the previous fiscal year to the Department no later than December 31<sup>st</sup> of the calendar year in which that fiscal year ended. Any bills submitted after December 31<sup>st</sup> will be processed against the current year's UPWP.
- G. Payment of costs is contingent upon compliance with the terms of Article 3 (Responsibilities of the MPO). Noncompliance may result in cancellation of authorized

work and suspension of payments after a thirty (30) day notification by the Department to the MPO Transportation Policy Board.

#### **Article 9. Reporting**

To permit program monitoring and reporting, the MPO shall prepare and submit an annual Performance and Expenditure Report of progress to the Department no later than December 31 of each year. A uniform format for the annual report will be established by the Department in cooperation with TEMPO. If task expenditures overrun or underrun a budgeted task amount by twenty-five percent (25%) or more, the annual performance and expenditure report must include an explanation for the overrun or underrun.

#### **Article 10. Indemnification**

- A. To the extent possible under state law, the MPO shall save harmless the Department and its officers and employees from all claims and liability that are due to activities of the MPO, its agents, or its employees performed under this agreement and that are caused by or result from error, omission, or negligent act of the MPO or of any person employed by the MPO.
- B. To the extent possible under state law, the MPO shall also save harmless the Department from any and all expense, including but not limited to, attorney fees that may be incurred by the Department in litigation or otherwise resisting claims or liabilities that may be imposed on the Department as a result of the activities of the MPO, its agents, or its employees.

#### **Article 11. Inspection of Work and Retention of Documents**

- A. The Department and, when federal funds are involved, the U. S. Department of Transportation (USDOT), and their authorized representatives shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this agreement and the premises on which it is being performed.
- B. If any inspection or evaluation is made on the premises of the MPO or a subcontractor, the MPO shall provide or require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in a manner that will not unduly delay the work.
- C. The MPO agrees to maintain all books, documents, papers, computer generated files, accounting records, and other evidence pertaining to costs incurred and work performed under this agreement, and shall make those materials available at its office during the time period covered and for four (4) years from the date of final payment under the UPWP. Those materials shall be made available during the specified period for inspection by the Department, the USDOT, and the Office of the Inspector General of the USDOT and any of their authorized representatives for the purpose of making audits, examinations, excerpts, and transcriptions.
- D. The state auditor may conduct an audit or investigation of any entity receiving funds from the Department directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly

through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit under the state's UGMS.

#### **Article 12. Work Performance**

All work performed under this agreement shall be carried out in a professional and orderly manner, and the products authorized in the UPWP shall be accurate and exhibit high standards of workmanship.

#### **Article 13. Disputes**

The MPO shall be responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of work under this agreement. In the event of a dispute between the Department and the MPO concerning the work performed hereunder in support of the urban transportation planning process, the dispute shall be resolved through binding arbitration. Furthermore, the arbiter shall be mutually acceptable to the Department and the MPO.

#### **Article 14. Non-collusion**

The MPO shall warrant that it has not employed or retained any company or person, other than a bona fide employee working for the MPO, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. If the MPO breaches or violates this warranty, the Department shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of the fee, commission, brokerage fee, gift, or contingent fee.

#### **Article 15. Subcontracts**

- A.** Any subcontract for services rendered by individuals or organizations not a part of the MPO's organization shall not be executed without prior authorization and approval of the subcontract by the Department and, when federal funds are involved, the USDOT. All work in the subcontract is subject to and the state's UGMS. If the work for the subcontract is authorized in the current approved UPWP, and if the MPO's procurement procedures for negotiated contracts have been approved by the Department either directly or through self-certification by the MPO, the subcontract shall be deemed to be authorized and approved, provided that the subcontract includes all provisions required by the Department and the USDOT.
- B.** Subcontracts in excess of \$25,000 shall contain all required provisions of this agreement.
- C.** No subcontract will relieve the MPO of its responsibility under this agreement.

#### **Article 16. Termination**

- A.** The Department may terminate this agreement at any time before the date of completion if the Governor withdraws his designation of the MPO. The Department or the MPO may seek termination of this agreement pursuant to Article 13 (Disputes) if either party fails to comply with the conditions of the agreement. The Department or the MPO shall give written notice to all parties at least ninety (90) days prior to the effective date of termination and specify the effective date of termination.
- B.** The Department may terminate this agreement for reasons of its own, subject to agreement by the MPO and the MPO Transportation Policy Board.
- C.** The parties to this agreement may terminate this agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the parties shall agree upon the termination conditions.
- D.** Upon termination of this agreement, whether for cause or at the convenience of the parties, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the MPO shall, at the option of the Department, be delivered to the Department.
- E.** The Department shall reimburse the MPO for those eligible expenses incurred during the agreement period that are directly attributable to the completed portion of the work covered by this agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The MPO shall not incur new obligations for the terminated portion after the effective date of termination.

#### **Article 17. Force Majeure**

Except with respect to defaults of subcontractors, the MPO shall not be in default by reason of failure in performance of this agreement in accordance with its terms (including any failure by the MPO to progress in the performance of the work) if that failure arises out of causes beyond the control and without the default or negligence of the MPO. Those causes may include but are not limited to acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the MPO.

#### **Article 18. Remedies**

- A.** Violation or breach of agreement terms by the MPO shall be grounds for termination of the agreement. Any costs incurred by the Department arising from the termination of this agreement shall be paid by the MPO.
- B.** This agreement shall not be considered as specifying the exclusive remedy for any dispute, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

#### **Article 19. Gratuities**

- A. Employees of the Department or the MPO shall not accept any benefits, gifts, or favors from any person doing business with, or who may do business with the Department or the MPO under this agreement.
- B. Any person doing business with, or who may do business with the Department or the MPO under this agreement, may not make any offer of benefits, gifts, or favors to Department or the MPO employees. Failure on the part of the Department or the MPO to adhere to this policy may result in termination of this agreement.

#### **Article 20. Compliance with Laws**

The parties to this agreement shall comply with all federal and state laws, statutes, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the MPO shall furnish the Department with satisfactory proof of its compliance.

#### **Article 21. Successors and Assigns**

The MPO or the Department shall not assign or transfer its interest in this agreement without written consent of the other party.

#### **Article 22. Debarment Certifications**

The MPO is prohibited from making any award or permitting any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. By executing this agreement, the MPO certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549.

The MPO shall require any party to a subcontract or purchase order awarded under this agreement as specified in 49 CFR Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by the Department, to furnish a copy of the certification.

#### **Article 23. Equal Employment Opportunity**

The parties to this agreement agree to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR §60).

#### **Article 24. Nondiscrimination**

During the performance of this agreement, the MPO, its assigns and successors in interest, agree to the following:

- A. Compliance with Regulations: The MPO shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT, 49 CFR Parts 21 and 26, CFR Part 710.405(b), as they may be amended from time to time (the "Regulations"), which are incorporated by reference and made a part of this agreement.
- B. Nondiscrimination: The MPO, with regard to the work performed during the agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MPO shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5 and Part 710.405(b), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the MPO for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the MPO of the MPO's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age or disability.
- D. Information and Reports: The MPO shall provide all information and reports required by the Regulations, or directives issued pursuant to the Regulations, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined to be pertinent by the Department or the USDOT to be pertinent to ascertain compliance with those Regulations or directives. Where any information required of the MPO is in the exclusive possession of another who fails or refuses to furnish this information, the MPO shall so certify to the Department or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the MPO's noncompliance with the nondiscrimination provisions of this agreement, the Department shall impose sanctions that it or the USDOT may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the MPO under the agreement until the MPO complies; and
  - 2. Cancellation, termination, or suspension of the agreement in whole or in part.
- F. Incorporation of Provisions: The MPO shall include the provisions of subsections A-E of this article in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant those Regulations. The MPO shall take action with respect to any subcontract or procurement as the Department may direct as a means of enforcing these provisions including sanctions for noncompliance; provided, however, in that event, the MPO may request the United States to enter into the litigation to protect the interests of the United States.

#### **Article 25. Nondiscrimination on the Basis of Disability**

The MPO agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under this agreement. The MPO shall ensure that all fixed facility

construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 CFR Part 27, and any amendments to it.

#### **Article 26. Disadvantaged Business Enterprise (DBE) Program Requirements**

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The MPO shall adopt, in its totality, the State's federally approved DBE program.
- C. The MPO shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The MPO shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The MPO shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address [http://txdot.gov/business/business\\_outreach/mou.htm](http://txdot.gov/business/business_outreach/mou.htm).
- E. The MPO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The MPO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of USDOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by the USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the MPO of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC §1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC §3801 et seq.).
- F. Each contract the MPO signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

#### **Article 27. Procurement**

- A. The MPO shall maintain approved written procurement procedures that meet or exceed the requirements of 49 CFR §18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," and the state's UGMS as

either may be revised or superseded. These procedures shall be used for all acquisitions authorized in any UPWP.

- B. The MPO agrees to comply with applicable Buy America requirements set forth in the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599) §401 and the FTA's Buy America regulations in 49 CFR §660.
- C. The MPO agrees to comply with the cargo preference requirements set forth in 46 USC §1241 and Maritime Administration regulations set forth in 46 CFR §381.

#### **Article 28. Environmental Protection and Energy Efficiency**

- A. The MPO agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 USC §1857(h); Section 508 of the Clean Water Act 33 USC §1368; Executive Order 11738 and Environmental Protection Agency regulations 40 CFR Part 15. The MPO further agrees to report violations to the Department.
- B. The MPO agrees to recognize standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### **Article 29. Property Management**

The MPO shall maintain written property management procedures that meet or exceed the requirements of 49 CFR §18, "Uniform Administrative Requirements for Grants and Agreements with State and Local Governments," and the state's UGMS as either may be revised or superseded. These procedures shall be used for any property acquired in whole or in part with federal and state funds provided through this agreement.

#### **Article 30. Federal Reimbursement**

The MPO shall be responsible for any funds determined to be ineligible for federal reimbursement, and shall reimburse the Department the amount of those funds previously provided to it by the Department.

#### **Article 31. Control of Drug Use**

The MPO agrees to comply with the terms of the FTA regulation, "Control of Drug Use in Mass Transportation Operations," set forth in 49 CFR Part 653.

#### **Article 32. Lobbying Certification**

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the MPO shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **Article 33. Amendments**

Any change to one or more of the terms and conditions of this agreement shall not be valid unless made in writing and agreed to by the parties before the change is implemented.

### **Article 34. Distribution of Products**

- A. The MPO shall provide a number of copies to be specified by the Department of all information, reports, proposals, brochures, summaries, written conclusions, graphic presentations, and similar materials developed by the MPO and the MPO Transportation Policy Board and financed, in whole or in part, as provided in this agreement. All reports published by the MPO shall contain the following prominent credit reference to the Department, USDOT, FHWA, and FTA: *Prepared in cooperation with the Texas Department of Transportation and the U.S. Department of Transportation, Federal Highway Administration, and Federal Transit Administration.*
- B. Upon termination of this agreement, all documents prepared by the MPO or furnished to the MPO and the MPO Transportation Policy Board by the Department, shall be delivered to the Department. All documents, photographs, calculations, programs, and other data prepared or used under this agreement may be used by the Department without restriction or limitation of further use.

### **Article 35. Legal Construction**

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

### **Article 36. Sole Agreement**

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this agreement.

### **Article 37. Copyrights**

The Department and the USDOT shall, with regard to any reports or other products produced under this agreement, reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.

### **Article 38. Federal Funding Accountability and Transparency Act Requirements**

**A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

**B.** The MPO agrees that it shall:

1. Obtain and provide to the Department a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://www.bpn.gov/ccr/default.aspx>;
2. Obtain and provide to the Department a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the Federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the Department if:
  - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

### **Article 39. Single Audit Report**

**A.** The parties shall comply with the requirements of the Single Audit Act of 1984, Pub. L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

**B.** If threshold expenditures of \$500,000 or more are met during the MPO's fiscal year, the MPO must submit a Single Audit Report and Management Letter (if applicable) to the Department's Audit Office, 125 East 11<sup>th</sup> Street, Austin, TX 78701 or contact the Department's Audit Office at [http://www.txdot.gov/contact\\_us/audit.htm](http://www.txdot.gov/contact_us/audit.htm).

**C.** If expenditures are less than \$500,000 during the MPO's fiscal year, the MPO must submit a statement to the Department's Audit Office as follows: "We did not meet the

\$500,000 expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."

- D. For each year the project remains open for federal funding expenditures, the MPO will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

**Article 40. Notices**

All notices to any party by the other parties required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to the party at the following addresses:

<b>MPO Transportation Policy Board:</b>	El Paso Metropolitan Planning Organization 10767 Gateway Boulevard West, Suite 605 El Paso, Texas 79935
<b>Fiscal Agent:</b>	City of El Paso 2 Civic Center Plaza El Paso, Texas 79901
<b>Department:</b>	Director, Transportation Planning & Programming Division Texas Department of Transportation 125 E. 11 <sup>th</sup> Street Austin, Texas 78701

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided in this agreement. Any party may change the above address by sending written notice of the change to the other parties. Any party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other parties.

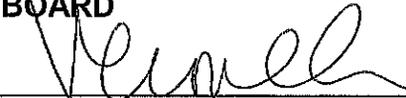
**Article 41. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

Contract # \_\_\_\_\_  
Federal Highway Administration  
CFDA # \_\_\_\_\_  
Not Research and Development

**THIS AGREEMENT IS EXECUTED** by the Department, the MPO Transportation Policy Board, and the Fiscal Agent in triplicate.

**THE MPO TRANSPORTATION POLICY BOARD**



Veronica Escobar, Chairperson  
Judge, County of El Paso

8/13/12  
Date

**THE FISCAL AGENT**

John Cook  
Mayor, City of El Paso

Date

**THE DEPARTMENT:**

Signature

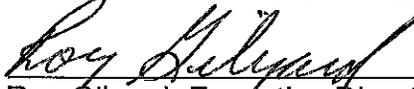
Print Name  
Director, Transportation Planning and  
Programming Division  
Texas Department of Transportation

Date

**ATTEST:**

Richarda Duffy Momsen  
City Clerk

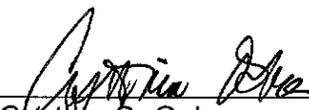
**APPROVED AS TO CONTENT:**

  
Roy Gilyard, Executive Director  
Metropolitan Planning Organization

**APPROVED AS TO FORM:**

  
Eduardo Miranda  
MPO Legal Counsel

**APPROVED AS TO FORM:**

  
Cynthia S. Osborn  
Assistant City Attorney