

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

DEPARTMENT: Department of Transportation

AGENDA DATE: November 29, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Harold Kutz (915) 621-6845

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign a Memorandum of Agreement ("MOA") between the Texas Commission on Environmental Quality ("TCEQ") and the City of El Paso ("City"), concerning the Parties respective responsibilities under the State Implementation Plan of Texas (SIP) as it pertains to the City. To memorialize the agreement between the Parties and to provide the City with alternative methods of particulate matter (PM) control consistent with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

BACKGROUND / DISCUSSION:

The purpose of this MOA is to set forth in plain language the understanding of the Parties regarding their respective responsibilities under the State Implementation Plan of Texas (SIP) as it pertains to the City of El Paso (El Paso area).

This agreement replaces Memorandum of Agreement adopted October 9, 2001.

PRIOR COUNCIL ACTION:

This agreement replaces Memorandum of Agreement adopted October 9, 2001.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:
Daryl W. Cole, Director
Department of Transportation


11/29/11

Information copy to Jane Shang, Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a Memorandum of Agreement between the Texas Commission on Environmental Quality ("TCEQ") and the City of El Paso ("City"), collectively the "Parties," concerning the Parties respective responsibilities under the Texas State Implementation Plan (SIP) as it pertains to the City, and to memorialize the agreement between the Parties to provide the City with alternative methods of particulate matter (PM) control consistent with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

PASSED AND APPROVED THIS _____ DAY OF _____ 201.

CITY OF EL PASO

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Elizabeth Ruhmann
Deputy City Attorney

APPROVED AS TO CONTENT:



Darvil W. Cole, Director 11/20/11
El Paso Department of Transportation

MEMORANDUM OF AGREEMENT

I. PARTIES

This Memorandum of Agreement (MOA) is entered into between the Texas Commission on Environmental Quality ("TCEQ") and the City of El Paso, Texas ("the City"), collectively the "Parties."

1. The Parties represent that they have the authority to enter into this MOA, including the authority granted in the Texas Government Code Chapter 791 Interlocal Cooperation Contracts.
2. The TCEQ has authority under § 5.229 of the Texas Water Code and § 382.033 of the Texas Health and Safety Code to enter into this MOA.
3. The Local Governments have authority under § 382.115 of the Texas Health and Safety Code to enter into this MOA.

II. INTENT AND PURPOSE

The purpose of this MOA is to set forth in plain language the understanding of the Parties regarding their respective responsibilities under the Texas State Implementation Plan (SIP) as it pertains to the City of El Paso (El Paso area).

The intent of the Parties by and through this MOA is to memorialize the agreement between the Parties to provide the City with alternative methods of particulate matter (PM) control consistent with attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for PM with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).

III. DEFINITIONS

As used in this MOA the following terms have the meanings given below:

1. "EPA" shall mean the United States Environmental Protection Agency.
2. "TCEQ" shall mean the Texas Commission on Environmental Quality, and all predecessor agencies.
3. "the City" shall mean the City of El Paso, Texas local government.
4. "El Paso area" shall mean the City of El Paso PM₁₀ nonattainment area.
5. "SIP" shall refer to the State Implementation Plan.

IV. BACKGROUND

1. Under § 110 of the Federal Clean Air Act (FCAA), 42 United States Code (USC) § 7410, each state that has a nonattainment area must submit a SIP to the EPA demonstrating strategies to come into compliance with the NAAQS.
2. Section 110 of the FCAA, 42 USC § 7410 also requires Texas to submit to the EPA for approval any SIP revisions, and to demonstrate that such SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable

further progress or any other requirement of the FCAA, as required by §110(l) of the FCAA.

3. Under the 1990 FCAA Amendments, the El Paso area was designated nonattainment under FCAA § 107(d)(4)(B) for the PM₁₀ NAAQS and subsequently classified as a moderate PM₁₀ nonattainment area.
4. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the TCEQ, submitted an attainment demonstration SIP revision. The SIP revision included PM control measures in 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter A, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots.
5. The control measures adopted in 30 TAC § 111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping for public thoroughfares in the El Paso area.
6. In 1991, a Memorandum of Understanding (MOU) between the City and the TACB was approved to outline the responsibilities and regulatory requirements for both Parties.
7. The 1991 MOU was replaced with a MOA with the City in 2001.
8. This MOA replaces the 2001 MOA with the City. This MOA is being revised to reflect changes to the control measures in 30 TAC §111.147.

V. UNDERSTANDING

1. The City agrees to maintain annual program funds in the City's capital improvement budget and in the City Department(s) operation budget(s) to comply with environmental regulations;
2. The Parties agree that the continued enforcement of no-burning periods may contribute to improvement in air quality in the El Paso area. The City will continue to enforce the regulations regarding burning contained in Chapter 9.38 of the El Paso City Code, and will continue to notify the local office of TCEQ of violations of Chapter 9.38 and 30 TAC § 111.111.
3. The TCEQ agrees to submit this agreement to the EPA as an appendix to the El Paso PM₁₀ SIP revision.

VI. TERM, RENEWAL, TERMINATION, AND MODIFICATION

This MOA will become effective upon signature by all Parties and shall remain in effect for ten years or until superseded. Following this ten year period, the MOA shall automatically be renewed for successive one-year renewal terms, without the necessity of formal action on the part of either Party, unless one of the Parties provides written notice of non-renewal 90 days prior to the end of the renewal term, whereupon the

MOA shall terminate at the end of the renewal term, as applicable. Representatives of the Parties will have by no later than the last day of March each year during the renewal term to consider whether any revisions or modifications to the MOA may be necessary or desirable. Any revision, modification, or amendment of the terms of the MOA must be made in writing by agreement of the Parties.

VII. MISCELLANEOUS

This MOA represents the entire agreement between the TCEQ and the City and supersedes all other agreements, understandings or commitments, written or oral, relative to the intent of this MOA. This MOA may not be amended or modified except pursuant to a mutual written agreement executed by each of the Parties.

This MOA shall be governed by and interpreted in accordance with the laws of the State of Texas.

In Witness Whereof, Texas Commission on Environmental Quality and the City of El Paso, by their authorized officers, have made and executed this MOA in multiple copies, each of which is deemed an original.

AGREED to by the undersigned Parties, this _____ day of _____, 2011.

ATTEST:

CITY OF EL PASO, TEXAS

By: _____
Richarda Momsen
El Paso City Clerk
Date: _____

By: _____
Joyce Wilson
City Manager
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____
Elizabeth M. Ruhmann
Assistant City Attorney
Date: _____

By:  _____
Darrell W. Cole
Director, Department of Transportation
Date: 11-21-11

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

By: _____
Mark R. Vickery, P.G.
Executive Director
Date: _____