

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

DEPARTMENT: MPO

AGENDA DATE: November 29, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Michael Medina, 591-9735 x 17

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a Consulting Agreement by and between the City of El Paso, Texas ("City"), acting in its capacity as the fiscal agent to the Metropolitan Planning Organization for the El Paso Urban Transportation Study Area ("MPO"), and the Texas Transportation Institute ("TTI") whereby the TTI agrees to assist the MPO in refining the MPO's Congestion Management Process to address Federal Highway Administration/Federal Transit Administration recommendations in order to ensure compliance with federal requirements

BACKGROUND / DISCUSSION:

The purpose of the Congestion Management Process (CMP) is to measure multi-model transportation system performance, identify the cause of traffic congestion, assess alternative actions, implement cost-effective actions and evaluate the effectiveness of implemented actions for the El Paso Metropolitan Planning Organization Study Area. A CMP is required in metropolitan areas with population exceeding 200,000, known as Transportation Management Areas (TMAs). Federal requirements also state that in all TMAs, the CMP shall be developed and implemented as an integrated part of the metropolitan transportation planning process. In TMAs designated as ozone or carbon monoxide non-attainment areas, the CMP takes on a greater significance. Federal law prohibits projects that result in a significant increase in carrying capacity for single occupant vehicles (SOVs) from being programmed in these areas unless the project is addressed in the region's CMP. The CMP must provide an analysis of reasonable travel demand reduction and operational management strategies; if the analysis demonstrates that these strategies cannot fully satisfy the need for additional capacity and additional SOV capacity is warranted, then the CMP must identify strategies to manage the SOV facility safely and effectively, along with other travel demand reduction and operational management strategies appropriate for the corridor.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

\$130,000. Account 502215, Fund 05043, Grant G781202, Dept. ID 68150009, No budget transfer required.

BOARD / COMMISSION ACTION:

The Transportation Policy Board for the MPO approved the Unified Planning Work Program, which lists this activity, on August 5, 2011.

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

DEPARTMENT HEAD: _____

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

RESOLUTION

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

That the City Manager be authorized to sign a Consulting Agreement by and between the City of El Paso, Texas (“City”), acting in its capacity as the fiscal agent to the Metropolitan Planning Organization for the El Paso Urban Transportation Study Area (“MPO”), and the Texas Transportation Institute (“TTI”) whereby the TTI agrees to assist the MPO in refining the MPO’s Congestion Management Process to address Federal Highway Administration/Federal Transit Administration recommendations in order to ensure compliance with federal requirements.

ADOPTED this ____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Roy Gilyard, Executive Director
Metropolitan Planning Organization

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES RECITED HEREIN, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

The CITY and TTI for the consideration and mutual promises as herein set forth agree as follows:

1. **SCOPE OF SERVICES**

The TTI agrees to provide the services described in Attachment "A," within the Work Schedule described in Attachment "B," both attachments made a part hereof by reference for all purposes.

2. **TERM**

The Term of this Agreement shall begin on December 1, 2011, and shall end on November 30, 2012.

3. **CONSIDERATION**

The total payment by the CITY to the TTI under this agreement shall not exceed ONE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$130,000.00). Periodic payments will be made to the TTI by the CITY within thirty (30) days following the monthly submittal of invoices and time sheets, accompanied by a progress report .

4. **CERTIFICATION**

The CITY hereby certifies that the services to be provided by TTI are necessary and essential activities that are properly within the statutory functions and programs of the CITY and the MPO.

5. **APPLICABLE LAWS**

The TTI shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.

6. **INDEPENDENT CONTRACTOR**

Nothing contained herein shall be construed as creating the relationship of employer and employee between the CITY and the TTI.

7. **ASSIGNMENT**

The services to be provided by the TTI under this Agreement are specific to the TTI and shall not be assigned or delegated without the prior written consent of the CITY. Any attempt to assign without the prior written consent of the CITY shall be void and, may at the option of the CITY, result in a termination of this Agreement.

8. **TERMINATION**

- A. Either party may terminate this Agreement if the other is in default upon ten (10) days written notice to the other party, provided that the other party shall be given a reasonable time to cure said default. The CITY and the TTI may terminate this Agreement upon thirty (30) days written notice to the other party.
- B. The dispute resolution process provided in chapter 2009, Texas Government Code, shall be used by the CITY and TTI to attempt to resolve any claim for breach of contract made by the parties that cannot be resolved in the ordinary course of business.
- C. Termination shall be without prejudice to any obligation by one party to the other, which shall have accrued and be owing prior thereto. CITY will reimburse TTI for expenses through the day of termination and for any non-cancelable expenses.
- D. Upon termination, the TTI shall return any materials belonging to the CITY, such as all drawings, plans, records, and other materials, which are currently in the TTI'S possession.

9. **NOTICES**

All notices, communications and reports under this Agreement shall be hand-delivered or mailed, certified, return receipt requested, to the respective parties at their respective addresses shown below, unless and until either party is otherwise notified in writing by the other party:

CITY: Executive Director
Metropolitan Planning Organization
10767 Gateway Blvd. West, Suite 605
El Paso, Texas 79935

TTI: Rafael Aldrete
4050 Rio Bravo, Suite 151
El Paso, Texas 79902

TTI Administrative:

David Lytle
Negotiator II
Texas A&M University System
Office of Sponsored Research Services
400 Harvey Mitchell Parkway South, Suite 300
Valley Park Center
College Station, Tx. 77845
phone: 979-845-8735
fax: 979-862-3250
<http://rf-web.tamu.edu>

10. **WAIVER**

Action or inaction by either party regarding any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent of any other right hereunder.

11. **DISCRIMINATION**

- A. Discrimination Prohibited: No person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination .
- B. Specific Discriminatory Actions prohibited: The parties hereto may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex, national origin, age or disability, or having the effect of defeating or substantially impairing accomplishments of the objectives of the project funded pursuant to this Agreement or any written amendment hereto with respect to individuals of a particular race, color, national origin, creed, sex, age or disability.

12. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the parties hereto, and no verbal or other written commitment shall have any force or effect if not contained herein.

13. **VENUE**

The parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas

14. **CONTRACT INTERPRETATION**

In interpreting the various provisions of this Agreement in a court of law, any court having jurisdiction shall apply the laws of the State of Texas to interpret the terms and provisions in this Agreement.

15. **SEVERABILITY**

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision which preserves the intention of the unenforceable provision, but which complies with the law.

16. **CAPTIONS**

The captions to the various paragraphs of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

17. **AUTHORITY.**

Each signatory to this agreement warrants that he or she is duly authorized by their respective principal to sign this agreement on behalf of the said principal and to bind the same.

18. **PROMOTIONAL USE.**

The TTI may not authorize or use any materials or information acquired or produced by the CITY or the MPO in the fulfillment of this agreement for any promotional use without limitation without the prior written consent of the CITY and the MPO.

19. **RECORDS.**

Records and documents prepared by the TTI and provided to the TTI shall be kept and maintained by the TTI for a minimum of two years after the expiration of this agreement. At the request of either the CITY or the MPO copies of such records or documents shall be provided by the TTI to the CITY or the MPO at no cost to either the CITY or the MPO.

20. **OWNERSHIP OF DOCUMENTS.**

Each party shall have ownership of the documents it prepares or causes to be made in fulfillment of its obligations under this agreement. Each party shall provide to the other,

at no cost, one complete copy of the final documents, records or reports prepared or made to fulfill this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ___ day of November, 2011.

THE CITY OF EL PASO, in its capacity as the
METROPOLITAN PLANNING ORGANIZATION
("CITY"):

By: _____
John F. Cook
Mayor

ATTEST:

Richarda Momsen

APPROVED AS TO CONTENT:

Roy Gilyard, Executive Director
Metropolitan Planning Organization

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

Eduardo Miranda
Legal Counsel for the MPO

TEXAS TRANSPORTATION INSTITUTE

By: _____

EXHIBIT "A"

SERVICES TO BE PROVIDED BY THE EL PASO MPO

The El Paso Metropolitan Planning Organization (MPO) will furnish the following items to TTI's Project Team:

1. The MPO's authorized representatives for this work authorization is Michael Medina, Assistant Director (915-591-9735, Ext. 17).
2. Timely decision making and review of work to permit the Project Team to maintain the mutually agreed upon project schedule.
3. Assistance, as deemed necessary by the MPO, in order for the Research Team to obtain required data from local, regional, state and federal agencies/entities.
4. Copyright symbols.

EXHIBIT "B"

SERVICES TO BE PROVIDED BY TTI (SCOPE OF WORK)

IDENTIFYING AND FACILITATING ENHANCEMENTS TO THE EL PASO CMP

I. BACKGROUND AND OBJECTIVE

The Congestion Management Process (CMP) is a Planning document required by the Federal Highway Administration (FHWA) in every area designated as non-attainment for ozone and carbon monoxide. As a non-attainment area, El Paso is required to prepare a CMP. The development of this document is responsibility of the El Paso MPO. The CMP requires the El Paso MPO to have a process or system in place to periodically assess the effectiveness of implemented regional transportation strategies and or projects.

The FHWA and the Federal Transit Administration (FTA) are responsible for jointly reviewing the metropolitan transportation planning process in all Transportation Management Areas (TMAs) at least every four years. A joint FHWA-FTA review team conducted a review of the El Paso MPO's CMP in August of 2010, and prepared a list of recommendations for improvement to the CMP. The El Paso MPO must address these recommendations to bring its CMP in compliance not later than May 2012 to avoid jeopardizing the ability of FHWA and FTA to authorize future added-capacity roadway projects.

In addition, there are currently no guidelines to develop a CMP that are specifically adapted to the unique situation of El Paso, the only Texas non-attainment area on the U.S.-Mexico border. Therefore, there is also a need to develop guidance to ensure that future CMPs prepared by the El Paso MPO are compliant with federal requirements.

Therefore this assistance has two objectives. The first objective is to facilitate the refinement of the El Paso MPO's CMP to address FHWA-FTA recommendations and ensure compliance with federal requirements. The second objective is to prepare guidance material adapted to the needs of the region that the El Paso MPO staff (or its consultants) can use to develop regional CMPs in the future

II. WORK PLAN

Activity 1. Assist in Maintaining Consistent Communication with FHWA

TTI will assist the El Paso MPO staff in maintaining consistent communication with FHWA by providing guidance and assistance in the development of periodic progress reports through the duration of this assistance and until the joint FHWA-FTA recommendations have been addressed.

Activity 2. Review Existing CMP and FHWA comments to Identify Deficiencies and Enhancements

TTI will review the report for the Joint Certification Review of the El Paso Metropolitan Transportation Planning Process to assess the specific CMP's deficiencies and enhancements identified by FHWA and FTA. Each deficiency or recommendation will be identified in a comprehensive list along with an assessment of the actions required to address it.

Activity 3. Ensure CMP complies with the five functions of the CMP

TTI will assist the MPO in developing a plan to ensure that the CMP complies with the five functions of the CMP required by federal regulations. This will be accomplished for each CMP function as follows:

1. **Measurement of Transportation System Performance.** TTI will assist the MPO in outlining a plan to improve and enhance the data collection and system performance measurement. The performance measures should give the users of the area's transportation systems knowledge of the duration, extent, intensity and reliability of congestion in easy to understand terms. This information could be used, for example, in websites to show travel times from one area of the city to downtown. Outcome measurement based on stated goals and objectives would also be a performance measurement component.
2. **Develop Improvement Initiatives.** TTI will assist the MPO in establishing a process in which projects are developed that incorporates or evaluates the causes and remedies of congestion. A wide variety of countermeasures will be investigated by TTI researchers, including TSM/TDM Documentation of project effectiveness based on the performance measures identified.
3. **Incorporate initiatives into the Long Range Plan and the TIP.** TTI will assist the MPO in developing a process in which measured congestion drives the selection of projects.
4. **Implement Approved Projects.** This is not responsibility of the MPO, but rather of each implementing agency (TxDOT, City of El Paso, others). Therefore no TTI assistance to the MPO is involved in this function.
5. **Evaluate project effectiveness.** TTI will assist the MPO in assessing methodologies to evaluate project effectiveness. Using the same method in step one is typically recommended to provide feedback to the process. All added capacity projects and ideally all projects should be evaluated.

Activity 4. Provide Solutions and Alternatives to the current CMP Methodology and Performance Monitoring Plan.

TTI will recommend solutions and alternatives to the current CMP methodology and performance monitoring plan, including:

1. Review of other MPO and best practices
2. Data collection alternatives¹
 - a. Existing travel time and traffic volume data collection
 - b. Use of ITS data collection methods
 - i. Travel Time (AVI, BT, LPR)
 - ii. Traffic Volume (Video, Radar, loops, tube counters)
 - iii. Transit Ridership (automatic passenger counters, sample counts)
 - iv. Bike (Permanent, Portable, Video)
 - v. Pedestrian (Permanent, Portable, Video)
 - c. Private Sector Data
 - d. Hybrid Data Approach
3. Assessment of future congestion
4. Development and Process for updating and amending the TMA network
5. Review of Goals and Objectives –what are measured outcomes of these goals

¹ Field data collection and purchase of data rights are not deliverables of this scope of work and would have to be acquired separately, on an as needed basis.

III. OUTPUTS AND DELIVERABLES

The final deliverables of this assistance will be:

- A document describing in detail a series of enhancements and recommendations that will address the FHWA-FTA comments on the El Paso MPO's CMP and ensure the CMP complies with federal requirements.
- A document that summarizes the solutions and alternatives to the current CMP methodology and performance monitoring plan that will serve as guidance for the development of future CMPs

EXHIBIT "C" WORK SCHEDULE

The proposed schedule for the implementation of this assistance is illustrated in Figure 1 below.

Figure 1: Study Schedule

Activities	Months												
	S	O	N	D	J	F	M	A	M	J	J	A	
1. Assist in Maintaining Consistent Communication with FHWA													
2. Review Existing CMP and FHWA comments to Identify Deficiencies and Enhancements													
3. Ensure CMP complies with the five functions of the CMP													
4. Provide Solutions and Alternatives to the current CMP Methodology and Performance Monitoring Plan.													

