

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

DEPARTMENT: El Paso MPO

AGENDA DATE: December 14, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Roy Gilyard, Exec. Director, 591-9735

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the Mayor be authorized to sign a Memorandum of Agreement by and between the New Mexico Department of Transportation and the City of El Paso, in its capacity as the designated Metropolitan Planning Organization for the El Paso Urban Transportation Study Area ("MPO") wherein the MPO will develop and implement an annual Unified Planning Work Program ("UPWP") that will serve as the frame work for development of transportation plans and programs.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The Code of Federal Regulations, Chapter 23, Section 450.314a, requires the MPO, the State(s), and the public transportation operator(s) to cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s) and the public transportation operator(s) serving the Metropolitan Planning Area (MPA).

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

In 2005, the City Council authorized the Mayor to sign an agreement.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****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 CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Memorandum of Agreement by and between the New Mexico Department of Transportation and the City of El Paso, in its capacity as the designated Metropolitan Planning Organization for the El Paso Urban Transportation Study Area ("MPO") wherein the MPO will develop and implement an annual Unified Planning Work Program ("UPWP") that will serve as the frame work for development of transportation plans and programs.

ADOPTED this ____ day of December 2010.

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

Contract No. _____

Vendor No. _____

Control No. _____

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND THE
EL PASO METROPOLITAN PLANNING ORGANIZATION**

This Memorandum of Agreement, hereinafter referred to as "MOA" is made and entered into this 5th day of November, 2010, by and between the New Mexico Department of Transportation, hereinafter referred to as the "Department," and the El Paso Metropolitan Planning Organization hereinafter referred to as the "MPO."

RECITALS

Whereas, each is a public agency and empowered to enter into this MOA; and,

Whereas, 23 U.S.C. §134, and 49 U.S.C. §5303, authorize federal assistance for the development of transportation plans and programs by way of a reimbursement program to be administered by each state; and,

Whereas, the Governor of New Mexico has designated the Department to receive and administer the federal funds under these programs; and,

Whereas, on August 30, 1988, the Governor of the State of Texas designated the El Paso Metropolitan Planning Organization as the MPO pursuant to Texas Rev. Civ. Stat. Ann., Art 6663 and to Section 112 of the Federal Highway Act of 1973; and,

Whereas, the Governor of the State of New Mexico designated the El Paso Metropolitan Planning Organization as an MPO pursuant to Section 112 of the Federal Highway Act of 1973. This results in the MPO being responsible, together with the Department, for carrying out the provisions of 23 U.S.C. §134, Metropolitan Planning, 23 U.S.C. §104(f)(3), Apportionment, 49 U.S.C. §5303, Mass Transportation-Metropolitan Planning, and 23 CFR 450.330.C, Metropolitan Planning; and,

Whereas, the Department, under the authority granted by NMSA 1978, §67-3-1 et se., or as amended, and the MPO desire to enter into and execute an Agreement for the purpose of implementing 23 U.S.C. §134 and 49 U.S.C. §5303, or as amended, a Project for federal reimbursement; and,

Whereas, both Parties are in agreement, the MPO in cooperation with the Department, 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 CFR 450, or as amended, and other subsequent federal laws and applicable regulations issued and its modal administrations; and,

Whereas, the Department is of the understanding that the MPO has both expertise and capability to develop and implement an annual Unified Planning Work Program (“UPWP”) that will serve as the framework for development of transportation plans and programs under this MOA and said work programs have been approved by the Department and the Federal Highway Administration (“FHWA”); and,

Whereas, the annual UPWP includes specific scopes of work herein referred to as “Tasks” undertaken by the MPO, as well as estimates of the funding amounts required to complete each identified Task in the annual UPWP; and,

Whereas, it is necessary to execute this MOA to assign each party’s responsibilities and the terms agreed upon by the parties to this MOA.

Now therefore, in consideration of the mutual promises and representations in this MOA, the parties agree as follows:

SECTION ONE: ACRONYMS AND DEFINITIONS

- **CMP** - Congestion Management Process. Provides information on the location and severity of current and future traffic congestion in the EPUTS area. It also makes recommendations for the best projects and programs to relieve the congestion. The CMP is an ongoing process resulting in periodic update reports. The MPO is required to use a CMP when selecting transportation projects for inclusion in the MTP and TIP.

- **Consultation** - Means that one party confers with another identified party and prior to taking action(s) considers that party's views.
- **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.
- **DOT** - Department of Transportation. In the context of this MOA, is the federal Department of Transportation, an agency of the Executive Branch of the United States Government.
- **FHWA** - Federal Highway Administration. Created in 1967 and authorized under Title 23 of United States 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 United States 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.
- **LRTP** - The Department's Long Range Transportation Plan, having a minimum twenty year forecast period that provides for the development and improvement of the Department's inter-modal transportation system.
- **MPO** - Metropolitan Planning Organization, created under 23 USC §134 for the purpose of transportation planning in metropolitan areas above 50,000 in population.
- **MTP** - Metropolitan Transportation Plan, having a minimum twenty year forecast period that provides for the development and improvement of the metropolitan inter-modal transportation system.
- **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 to the Department. 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.

- **SAFETEA-LU** – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, enacted as Public Law 109-59, covered a six-year time span that expired as of October 1, 2009. Since that time, transportation planning has been funded through a series of Continuing Resolutions adopted by the U.S. Congress.
- **STIP** - State Transportation Improvement Program. A four year planning document, of which the first year represents the agreed to list of projects for subsequent scheduling and implementation required under 23 USC §135.
- **TIP** - Transportation Improvement Program. The approved three year listing of prioritized projects, within the MPO, detailed by funding categories and included in the STIP.
- **UPWP** - Unified Planning Work Program is an annual listing of activities that will be undertaken by the MPO.

SECTION TWO: BOTH PARTIES AGREE

The Department and the MPO agree to cooperatively develop emphasis areas for the annual UPWP to be consistent with the Statewide Long Range Plan, the Metropolitan Transportation Plan, the Planning Division's Annual Work Plan and to include sufficient descriptions of all Tasks for which the MPO will seek reimbursement. The Department and the MPO agree to negotiate and execute the terms and conditions, which include compensation, in the individual Tasks by written Work Authorizations, without the necessity of having to amend this MOA.

SECTION THREE: PURPOSE OF MOA

The purpose of this MOA is to facilitate cooperation, collaboration, coordination, and communication between local governments and tribal entities, to provide funding, and effectuate the encumbering of each individual program fund for the UPWP Tasks. This MOA is a joint and coordinated effort for which the Department and MPO each have authority or jurisdiction. This MOA shall specify and delineate the rights and duties of the parties hereto.

SECTION FOUR: SCOPE OF THE PROJECT

The MPO through this MOA agrees to continue, perform, and complete the Tasks identified in the annual UPWP which will be incorporated by reference in subsequent

Work Authorizations to this MOA. The MPO will submit quarterly reports to the Department describing progress on each of the Tasks. Quarterly performance of each Task will be reported relative to the annual requirements as specified in each individual Task. Major work elements in each annual UPWP are hereby adopted by reference and made part of this MOA. The parties agree that the annual or biannual UPWP for the term identified in Section Twenty Five of this MOA will be incorporated herein by reference and made part of this MOA.

SECTION FIVE: MPO DUTIES

1. Act in the capacity as the designated lead agency for each individual Task identified in the annual UPWP.
2. Assure the development of the annual UPWP and each supporting and individual Task.
3. Abide by the annual resolution passed by the El Paso MPO Policy Committee approving the annual UPWP in support of each Task for the El Paso Metropolitan Planning Area.
4. Coordinate the planning processes with the appropriate District Offices and RPOs/MPOs impacted by Tasks of the MPO through the UPWP.
5. Coordinate MPO activities and planning with appropriate local/regional organizations and/or agencies involved with land use planning, environmental planning, economic development planning, and transportation planning and services, including Regional Transit Districts, potentially impacted by, or having an impact on, the MPO and its numerous supportive programs.
6. Designate a point of contact for the transportation planning program.
7. Assure all data collected under this MOA is made available to the Department upon request by the Department.
8. Comply at all times with the New Mexico Open Meetings Act, NMSA 1978, §10-15-1, et. Seq., and other notice requirements as appropriate. Notification to the Department shall be transmitted by E-Mail. Provide for distribution of regular MPO meeting agendas and packets to member entities and to the designated Department liaison not later than seven days prior to each meeting.
9. Develop and implement a Public Participation Plan (PPP) in consultation with the Department, evaluate and report to the Department on the effectiveness of the PIP in contributing to transportation investment and policy decisions on an annual basis and refine as needed.

10. Designate a point of contact, develop and implement a plan and policies to assure Title VI compliance, maintain required documentation.
11. Submit annual Performance and Expenditure (P&E) and annual Obligation Report according to the schedule in Section Nine.
12. Develop and assure consistency between the Metropolitan Transportation Plan (MTP), the Transportation Improvement Plan (TIP), the UPWP and annual P&E Reports.
13. In cooperation and coordination with the Department, jointly certify to the FHWA and FTA, compliance with federal requirements.
14. The MPO shall take action on all written requests to the MPO for all Department changes affecting the TIP.
15. Assure that local entities submit detailed and accurate Project Information Forms, updated as needed to maintain consistency with the current TIP and STIP to the Department to facilitate the timely preparation and execution of Local Government Agreements.

SECTION SIX: DEPARTMENT DUTIES

1. Provide for the reimbursement of funding in support of the Tasks identified in the MPO'S annual UPWP.
2. Designate staff to maintain liaison with the MPO.
3. Provide technical assistance concerning the development of the MTP, TIP, PIP and UPWP.
4. Monitor work progress of the MPO.
5. Coordinate Department reviews and approvals of MPO products.
6. Annually approve the MPO'S UPWP when compliant
7. Annually review and approve MPO's Indirect Cost Allocation Plan when the Department serves as the Cognizant Agency.
8. In cooperation and coordination with the MPO, jointly certify to the FHWA and FTA, compliance with federal requirements.
9. Ensure New Mexico State Transportation Commission Policy is followed to the extent it applies.
10. Assure participation by the District Engineer in the project prioritization process and that regional recommendations effectively address both design and fiscal constraints while maximizing transportation system function and efficiency.
11. Provide a written request to the MPO for all Department changes and modifications affecting the TIP. Unless otherwise agreed to, requests for such

action shall be provided in writing not later than thirty days prior to the MPO Policy Board meeting for action expected on the request.

12. Following the approval of the TIP by the MPO, include the TIP without modification in the STIP.
13. Provide an annual Notice Letter or Email notification estimating anticipated transportation planning funding level, and written notification estimating transportation improvements funding levels/targets within thirty calendar days following the federal register publication by the FHWA of the state's annual appropriations. Provide timely notification of changes in funding levels.
14. The Department shall issue Work Authorizations as necessary for Tasks identified in the annual UPWP, specifying both the amount awarded to the MPO and the federal, state and local match ratios required. Work Authorizations shall be issued within ten working days of FHWA approval of the Planning Division's AWP and incorporated UPWPs.
15. Prepare and execute Local Government Agreements in a timely manner, predicated on the MPO having submitted detailed and accurate documentation regarding Project Information Forms, and consistency with the current TIP and STIP.
16. Provide technical assistance and coordination to MPO with respect to federal and state laws and regulations, and Department policies and directives with respect to transportation plans and programs.
17. Provide Departmental traffic count data acquired to meet HPMS requirements to the MPO on a quarterly basis.

SECTION SEVEN: COMPENSATION

1. Compensation will be negotiated separately for each individual Task identified in the annual UPWP and identified in a Work Authorization. The Department shall provide its costs on a reimbursable and individual basis as warranted per Task identified in the annual UPWP. The MPO shall provide for its matching funds to cover the expenses of each identified Task in the annual UPWP and the project budget. Each project budget will be included in the annual UPWP. The Department shall not be responsible for any costs not identified in the Work Authorization. The MPO shall initiate and complete all actions necessary to fulfill its obligation for the annual UPWP.
2. Reimbursement to the MPO shall be made upon submittal of invoices by the MPO to the Planning Office for each Work Authorization.

3. The parties agree that specific funding for each individual Task shall be dedicated to each individual Task and shall not be used for a different Task identified in the annual UPWP.

SECTION EIGHT: METHOD OF PAYMENT

The Department shall reimburse the MPO for the federal and/or state share of the eligible expenses upon receipt of invoices, with sufficient supporting documentation as determined and/or approved by the Department, indicating that expenses have been paid. Such invoices shall be submitted monthly, to be received by the Department by the 25th day of the month following close of the invoice period. Invoices shall have a certification by the MPO that the invoices accurately reflect work completed, amount due, Work Authorization number, remaining work authorization balance, control and/or 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.

SECTION NINE: REPORTING

The MPO shall submit quarterly status reports for each Task identified in the annual UPWP to the Department after the end of each quarter but no later than October 25, January 25, April 25, and August 25. At a minimum, the quarterly status report shall indicate the current and cumulative status of the work program elements with respect to the activities undertaken and funds expended. The MPO shall submit the annual year-end Obligation Report and Performance and Expenditure Report on or before September 30, if the MPO's UPWP runs concurrently with the state fiscal year; or on or before December 30th if the MPO's UPWP runs currently with the federal fiscal year.

SECTION TEN: ELIGIBLE COSTS

Eligible costs are those costs attributable to each Work Authorization and which are allowable under the approved annual UPWP Budget and the provisions of:

1. OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," and any amendments thereto.
2. OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments," and any amendments thereto.
3. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and any amendments thereto.

All costs must be supported by properly executed invoices, vouchers, warrants, and any other documentation required by the above regulations, including an Indirect Cost Plan submitted to and approved by the cognizant agency, evidencing that those costs were specifically incurred in the performance of this MOA. This documentation shall be clearly identified and readily accessible.

SECTION ELEVEN: 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 Department solely from federal funds made available to the Department for said purpose(s) unless otherwise stipulated.

SECTION TWELVE: APPROPRIATIONS AND AUTHORIZATIONS

The terms of this MOA 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 MOA. If sufficient appropriations and authorizations are not made by the Legislature, or the Congress of the United States, if federal funds are involved, this MOA shall terminate upon written notice given by the Department to the MPO. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department. The Department will notify the MPO by a written Work Authorization when the appropriate funds have been encumbered. The Department's decision as to whether its funds are available shall be accepted by the MPO and shall be final.

SECTION THIRTEEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS - RECORDS AND AUDIT

The MPO agrees to maintain all books, papers, documents, accounting records, and other evidence pertaining to costs incurred for each individual Task identified in the annual UPWP and to make such materials available at their respective offices at all reasonable times during each annual UPWP period and for five years from the date of final payment under each Work Authorization for inspection by the State.

SECTION FOURTEEN: AUDIT EXCEPTIONS

If federal or state audit exceptions relating to this MOA or any Work Authorization are confirmed, the MPO shall reimburse the amount of the audit exception directly to the grantor or the Department as specified by the Department in the notification.

SECTION FIFTEEN: ALLOWABLE COSTS, IF TERMINATED

In the event this MOA is terminated, or any individual Work Authorization is terminated, the Department or its duly authorized representative shall pay the MPO for all the allowable costs incurred prior to the date of termination, subject to audit verification. In the event of termination for cause, the MPO will not be paid for any costs for performance that did not satisfactorily meet the terms and conditions of this MOA.

SECTION SIXTEEN: PRINCIPAL CONTACTS

The principal contacts for this MOA:

Department

Anne McLaughlin, AICP, Strategic Planning Bureau Chief (SB-1, S)
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, NM 87504-1149
505-827-5508

EL PASO Metropolitan Planning Organization

Executive Director
El Paso Metropolitan Planning Organization
10767 Gateway Blvd. West, Suite 605
El Paso, Texas 79935
915-591-9735

SECTION SEVENTEEN: LEGAL COMPLIANCE

The MPO shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies in the performance of this Agreement. These laws include, but are not limited to: FHWA Memorandums; 23 CFR Part 630.106 Authorization to proceed and project monitoring; 23 CFR Part 630.112 Agreement Provisions; 23 U.S.C. 106 Project approval and oversight [as amended by SAFETEA-LU section 1904]; Single Audit Act Amendments of 1996 (P.L. 104-156)/OMB Circular A-133, Audits of States,

Local Governments, and Non-Profit Organizations; 49 CFR Part 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Titles VI and VII of the Civil Rights Act of 1964 and related statutes; the Disadvantaged Business Enterprise Program (49 CFR 26); the External Equal Opportunity/Contractor Compliance Program, including On-the-Job training requirements (23 CFR 230); and the Americans with Disabilities Act (42 USC 12101-12213, 28 CFR 35 and 36) as amended. Additionally, the MPO shall comply with all applicable federal, state and local laws and regulations governing environmental issues, workplace safety, employer-employee relations and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The MPO shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

**SECTION EIGHTEEN:
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM OBLIGATIONS**

In accordance with Title 49 Code of Federal Regulations Part 26 (49 CFR 26) or as may be amended, the MPO shall agree to abide by and take all necessary and reasonable steps to comply with the following:

(1) DBE Policy: It is the policy of the Department to implement the provisions of 49 CFR 26, other pertinent regulations, and source legislation. The objectives are:

A. To ensure nondiscrimination in the award and administration of United States Department of Transportation (DOT) assisted contracts in the DOT's highway, transit, and airport financial assistance programs;

B. To create a level playing field on which DBEs can fairly compete for DOT-assisted contracts:

C. To ensure that DOT's DBE Program is narrowly tailored in accordance with applicable law;

D. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;

E. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and

F. To assist the development of firms that can complete successfully in the marketplace outside the DBE Program.

(2) DBE Obligations: The Department will establish the state DBE goal on an annual basis. The approved FY 2008 state DBE goal is established at 9.32% for all federally assisted projects.

A. Means of Attaining the State Goal: The Department will meet the state DBE goal on federally assisted projects through race neutral measures. There will be no individual project goals on federally assisted projects unless an analysis of DBE utilization indicates that the goal falls substantially short of the annual goal and that good faith efforts have not been fulfilled. In the event the Department adopts race conscious measures to attain the state DBE goal, the MPO shall be required to implement the individual project goal established by the Department.

B. Record Keeping Responsibilities: The MPO is responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department's project manager or to the Department's Office of Equal Opportunity Program Bureau (OEOPB) at the following address:

New Mexico Department of Transportation
OEOPB
Aspen Plaza, Suite 107
1596 Pacheco Street
Santa Fe, New Mexico 87505

(3) Department's DBE Program: The Department's DBE Program, 18 NMAC 28.2 as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of 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 the terms and conditions of the DBE Program, the Department may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

(4) Recipient/MPO Assurances: Each contract the MPO enters into with a planning consultant or recipient on a DOT-assisted project shall ensure that such contract and subcontracts shall include the following assurances:

A. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the

administration of its DBE Program or the requirements of 49 CFR 26. The Department shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and the administration of DOT-assisted contracts. The Department's DBE Program, as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of 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 recipient of its failure to carry out its approved program, the DOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

B. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The recipient shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the recipient 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 Department deems appropriate.

19. Notice.

The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, or kickbacks in the procurement of this Agreement. In addition, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation.

20. Applicable Law.

The Laws of the State of New Mexico shall govern this Agreement.

SECTION TWENTY: EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM OBLIGATIONS

1. MPO Assurances – Each contract the MPO enters into with a planning consultant or recipient on a DOT-assisted planning project, and any subcontract thereto, shall include the following assurances:
 - a. The MPO shall not discriminate on the basis of race, age, color, religion national origin, sex, disability, veteran status, or sexual orientation in the performance of this Agreement. The MPO shall comply with all applicable civil rights requirements in the award and administration of NMDOT-assisted contracts. Failure by the MPO 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 Department deems appropriate. Further, the Department may impose sanctions and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

- b. The MPO hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (herein referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the MPO received Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by subsection 21.7 (a)(1) of the Regulations.

SECTION TWENTY-ONE: TORT CLAIMS ACT

No provision of this MOA establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or MPO arising from the performance of this MOA apart from that set forth in New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et Seq. (1976)..

SECTION TWENTY-TWO: THIRD PARTY BENEFICIARY CLAUSE

No provision of this MOA creates in the public, or any member thereof, a third party beneficiary nor authorizes anyone not a party to the MOA to maintain a suit for wrongful

death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this MOA.

SECTION TWENTY-THREE: OFFICE OF INSPECTOR GENERAL REVIEWS

The MPO shall provide information to ensure all bidders are aware of the reporting and oversight required and are bound by the conditions from the time of bid submission. The following contract provisions must be included in all MPO prime contracts, subcontracts, and other contracts for services for a Federally funded project.

- 1) **Inspector General Reviews.** Any inspector general of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using federal funds. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned.
- 2) **Access of Offices of Inspector General to Certain Records and Employees.** With respect to each contract or grant awarded using federal funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub grant; and to interview any officer or employee of the contractor, grantee, sub grantee, or agency regarding such transactions.
 - a) Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the MPO or any of MPO's subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract.
 - b) Allow the Comptroller General and his representatives to interview any officer or employee of the MPO or any of MPO's subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
 - c) Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.
- 3) **New Mexico Department of Transportation/Office of Inspector General.** As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, the Department's Office of Inspector General (OIG) has the authority to carry out all duties required to collect information, conduct audits, special studies

and investigations. The duties are the same as those specified in federal law: Office of Inspector General, 23 USC §302 (the capability to carry out the duties required by law); 23 USC §112 (contracting for engineering and design services); 23 USC §106 (project approval); 23 USC 112 - Sec. 112, (letting of contracts); 23 USC 113 - Sec. 113 (prevailing rate of wage); 23 USC 114 - Sec. 114 (construction); 23 CFR 635 & 23 CFR 636 (design build); 23 CFR 637 (construction inspection approval). The duties of the Department's OIG also arise from the responsibility all state Departments of Transportation have for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U .S.C. 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

SECTION TWENTY-FOUR: SEVERABILITY

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

SECTION TWENTY-FIVE: EFFECTIVE DATE AND TERM

This MOA shall not be effective until executed by the Secretary of the Department or his/her designee. If there is an MOA or outstanding work authorization when the Secretary of the Department executes this Agreement, the parties will not take any action to implement the terms of this Agreement until the previous MOA and Work Authorization expire. The term of this MOA is from the date the Secretary of the Department executes this Agreement and shall terminate on September 30, 2015, unless terminated pursuant to the terms and conditions of this MOA.

SECTION TWENTY-SIX: TERMINATION

The Department has the option of canceling this MOA 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 Department 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 of the work rendered prior to the date of termination of this MOA. 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 MOA for cause based upon any material breach of this MOA 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 MOA effectively immediately. The non-breaching party shall retain any and all other remedies available to it under law.

SECTION TWENTY-SEVEN: TERMS OF THE MOA

This MOA 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 MOA. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this MOA.

SECTION TWENTY- EIGHT: CONTROLLING TERMS AND CONDITIONS

In the event of any conflict, inconsistency, or incongruity between the provisions of this MOA and each Work Authorization, the provisions and terms of this MOA shall govern and control.

SECTION TWENTY- NINE: AMENDMENT

This MOA 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 MOA on the dates specified below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

By: _____
General Counsel or Designee

Date: _____

APPROVED AS TO CONTENT BY THE MPO

By:  _____
Policy Board Chairperson
El Paso Metropolitan Planning Organization

Date: 11/5/2010

By:  _____
Roy, Gilyard, Executive Director

Date: 11/5/2010

APPROVED AS TO FORM BY THE OFFICE OF THE MPO'S LEGAL COUNSEL

By:  _____
Eduardo Miranda, City of El Paso

Date: 11/5/2010

APPROVED AS TO FORM

By:  _____
Sylvia Borunda Firth
Senior Assistant City Attorney
City of El Paso

Date _____

THE CITY OF EL PASO, in its capacity
as THE EL PASO METROPOLITAN
PLANNING ORGANIZATION

By: _____
John F. Cook
Mayor

Date _____