

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

AGENDA DATE: 05/23/2023

CONTACT PERSON(S) NAME AND PHONE NUMBER: Robert Cortinas (915) 212-1067

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 6 – Set the standard for sound governance and fiscal management

SUBJECT:

That the Mayor be authorized to sign the Agreement with Metropolitan Planning Organization by and between the State of Texas, acting through the Texas Department of Transportation, called the "Department", the El Paso Metropolitan Planning Organization (MPO) Transportation Policy Board, designated by the Governor of the State of Texas as the MPO of the El Paso urbanized area, and the City of El Paso, as the Fiscal Agent for the MPO.

BACKGROUND / DISCUSSION:

This is the First Amended Operational Policy Agreement, as authorized by Title 23 United States Code ("USC") Section 134, entered into by and between the El Paso Metropolitan Planning Organization ("MPO") and the City of El Paso ("City"). The purpose of the amendment is to define and describe the roles and responsibilities between the City and the MPO.

PRIOR COUNCIL ACTION:

The prior Agreement entered into between the State of Texas, acting through the Texas Department of Transportation (the "Department"), the El Paso MPO, and the City, dated August 21, 2018 (the "Planning Agreement"). Pursuant to the Planning Agreement, City is designated as the Fiscal Agent for the El Paso MPO.

AMOUNT AND SOURCE OF FUNDING:

No dollar amounts applicable.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Office of the Comptroller

SECONDARY DEPARTMENTS: Office of Management and Budget, Purchasing and Strategic Sourcing, Information Technology and Human Resources Departments

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

DEPARTMENT HEAD: Robert Cortinas

(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 Mayor be authorized to sign the First Amended Operational Policy Agreement between the City of El Paso (“City”) and the El Paso Metropolitan Planning Organization (“MPO”) establishing the duties and responsibilities of the MPO and the City as the Fiscal Agent for the MPO.

ADOPTED this ____ day of _____, 2023.


THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Robert Cortinas
Deputy City Manager &
Chief Financial Officer

FIRST AMENDED OPERATIONAL POLICY AGREEMENT BETWEEN THE CITY OF EL PASO AS FISCAL AGENT AND THE EL PASO METROPOLITAN PLANNING ORGANIZATION

This First Amended Operational Policy Agreement, as authorized by Title 23 United States Code (“USC”) Section 134, is entered into by and between the El Paso Metropolitan Planning Organization (“MPO”) and the City of El Paso (“City”) (collectively referred to as the “Parties”).

RECITALS

WHEREAS, the Governor of the State of Texas has designated the El Paso Metropolitan Planning Organization (“MPO”) as the duly designated Metropolitan Planning Organization for the El Paso Urbanized Transportation Study Area; and,

WHEREAS, the Transportation Policy Board (“TPB”) is the policy-making body responsible for establishing regional transportation planning policies for the El Paso Urbanized Transportation Study Area; and,

WHEREAS, the City serves as the fiscal agent for the MPO; and

WHEREAS, MPO requests that the City continue to serve as the fiscal agent for the MPO; and

WHEREAS, City believes it is in the public interest to assist MPO as its fiscal agent.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I. PURPOSE.

The purpose of this Operational Policy Agreement is to more particularly define and describe the roles and responsibilities between the City of El Paso (“City”) and the El Paso Metropolitan Planning Organization (“El Paso MPO”), in accordance with the Agreement entered into between the State of Texas, acting through the Texas Department of Transportation (the “Department”), the El Paso MPO, and the City, dated August 21, 2018 (the “Planning Agreement”). Pursuant to the Planning Agreement, City is designated as the Fiscal Agent for the El Paso MPO.

ARTICLE 2. TERM.

The term of this Operational Policy Agreement begins upon execution by both parties and shall automatically renew each year unless terminated as herein provided in Article 8.

ARTICLE 3. DESCRIPTION OF SERVICES

The City agrees that in its role as Fiscal Agent it is responsible for providing the El Paso MPO with fiscal services; and that it will also continue to provide such administrative support service as timekeeping and payroll processing services, human resource services, information technology (“IT”) support, consulting and management services, purchasing and procurement services, and other staff support services.

ARTICLE 4. MUTUAL ACKNOWLEDGEMENTS

Both Parties recognize and acknowledge that the MPO is a separate and distinct governmental entity established pursuant to the laws of the United States and the State of Texas.

ARTICLE 5. RESPONSIBILITIES OF THE FISCAL AGENT.

The City agrees that its responsibilities are as follows:

A. Fiscal Agent Services

1. Provide the upfront funds, as identified by fiscal year in the Unified Planning Work Program (“UPWP”), to allow MPO to effectively and efficiently operate its transportation projects, plans, and programs. City will be reimbursed with MPO’s federal metropolitan planning funds.
2. Assess a usual and customary indirect cost on a periodic basis upon a “cost of services” study conducted by City. The Federal Transit Administration must approve the indirect cost rate. The indirect cost shall be posted to the City’s Accounting System within the fiscal year.
3. Promptly disburse federal metropolitan planning funds on behalf of MPO in the amounts specified by MPO, so long as MPO budget has sufficient funds to accommodate all payment requests.
4. Maintain one or more separate governmental funds under the supervision of the City Manager, or the City Manager’s designee. In carrying out the requirements of this Operational Policy Agreement, the City is responsible only in the capacity of a trust officer for the funds involved.
5. Maintain required accounting records for state and federal funds consistent with current state and federal requirements. Such records shall be available for inspection at the MPO offices or at other appropriate locations during the MPO’s normal business hours.

B. Human Resource Services

1. All MPO staff (except for the Executive Director) shall be considered unclassified employees of the City of El Paso for the purposes of payroll, indemnification, and all fringe benefits, including retirement benefits, medical and life insurance, vacation, sick leave, holidays, and all other benefits usually extended to City employees.
2. Provide benefits to the MPO Executive Director and MPO staff that shall be the same as City normally provides its own employees. MPO shall reimburse City for costs incurred by City in providing these employee fringe benefits.

3. Provide guidance and recommendations, through the Human Resource Director, or his or her designee, as requested by MPO Executive Director on personnel matters concerning MPO staff.
4. Post MPO job announcements, accept applications, and forwards all applications to MPO Executive Director.

C. Purchasing and Procurement Services

1. Provide purchasing and procurement services to MPO.
2. Maintain and follow written procurement and property management procedures that meet or exceed the requirements of 49 CFR 18.36 and the property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards and also the Texas Uniform Grant Management Standards for MPO related purchasing and procurement services.
3. Maintain and follow the applicable BUY America established under federal law for MPO related purchasing and procurement services.
4. Make available City’s purchasing card program to MPO. If the purchasing card program is used, MPO will comply with the City’s purchasing card policies.

D. IT Support Services

1. Provide IT support and technical services to MPO.
2. Provide on-going day-to-day technical support for MPO computers, phone system, network, site-to-site Virtual Private Network (“VPN”), as well as all other technical support MPO may require.
3. Provide internet access and service that meets the needs and requirements of the El Paso MPO.

E. Audit

1. Provide guidance and assistance as needed with annual audits.

ARTICLE 6. RESPONSIBILITIES OF THE EL PASO MPO.

MPO agrees that its responsibilities are as follows:

A. Fiscal Services

1. Develop a UPWP that meets federal requirements. MPO will develop and set the budget for all MPO activities.

2. Document planning activities in a UPWP to indicate who will perform the work, the schedule for completing it, and all products that will be produced.
3. Use federal metropolitan planning funds provided in accordance with 43 Texas Administrative Code (“TAC”) § 16.52 and Article 2 (Responsibilities of the Department) of the Planning Agreement to develop and maintain a comprehensive regional transportation planning program in conformity with the requirements of 23 USC § 134, 49 USC § 5303, and the Texas Comptroller of Public Accounts Uniform Grant Management Standards (UGMS).
4. Prepare all required plans, programs, reports, data, and obtain required certifications in a timely manner.
5. Record all accounting transactions in accordance to Governmental Accounting Standards Board (GASB). Reconcile Net Position Accounts throughout the year and maintain appropriate backup to substantiate transactions. Backup should be maintained in accordance with the record retention policy of the City.
6. Abide by all City’s financial policies and procedures and provide assistance to Office of the Comptroller during the audit time. Assistance includes but is not limited to responding to audit request timely and accurately and providing grant related documentation when needed.
7. Enter into contracts and agreements in its own name. MPO is solely responsible for the accuracy of the records of funds it expends and those spent by its agents or consultants that contract with MPO.

B. Human Resource Services

1. Assemble and maintain an adequate and competent staff with the knowledge and experience that will enable them to maintain to perform all appropriate MPO activities that are required by law. The MPO Executive Director shall have the sole authority to hire, supervise, evaluate, and terminate all MPO staff. MPO Executive Director will set the appropriate compensation for all MPO staff, including appropriate compensation ranges.
2. To the extent permitted by law, MPO will adopt the City’s personnel policies and procedures.
3. Reimburse City for costs incurred in providing employee benefits to MPO Executive Director and MPO staff.

C. Purchasing and Procurement Services

1. Abide by purchasing and procurement policies outlined in all applicable federal and state laws and regulations.

2. To the extent applicable, the El Paso MPO adopts the City's purchasing and procurement policies.

D. IT Support Services

1. Abide by the City's IT policies and procedures.

E. Audit

1. Provide an independent audit in accordance with auditing standards generally accepted in the United States of America as applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); and the State of Texas Uniform Grant Management Standards, issued by the Texas Comptroller of Public Accounts. MPO staff will work with the auditors to provide all information necessary to complete the audit.

F. Additional Services and Responsibilities

1. Assign the City Manager, or the City Manager's designee, as the point of contact for the Executive Director to discuss, review, and resolve issues that may arise with regard to the City's provision of services under this Agreement.
2. Assign sufficient City staff to provide services to MPO as required to fulfill its duties under this Agreement.

**ARTICLE 7. RESPONSIBILITIES OF THE EL PASO MPO TRANSPORTATION
POLICY BOARD**

MPO TPB agrees that its responsibilities are as follows:

A. Fiscal Services

1. Ensure that the requirements of 23 USC §§ 134 and 135 and 49 USC, Chapter 53, are carried out.
2. Use federal metropolitan planning funds in accordance with Article 2 (Responsibilities of the Department) of the Planning Agreement to develop and maintain a comprehensive regional transportation planning program in accordance with requirements of 23 USC § 134 and 49 USC § 5303.

B. Human Resource Services

1. Exercise sole responsibility to hire, compensate, supervise, evaluate, and terminate MPO Executive Director.
2. Provide planning policy direction to MPO Executive Director.

ARTICLE 8. TERMINATION

Termination of this Agreement shall be made in accordance with Article 16 of the Planning Agreement.

1. Either party may terminate this Agreement when its continuation would not produce beneficial results commensurate with further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.
2. Either party may terminate this Agreement at any time before the date of completion if the Governor withdraws his designation of the MPO.
3. Either party may terminate this Agreement if the other party fails to comply with the conditions of this Agreement.
4. Termination shall be effected by the conveyance of a written notification to the other Party at least one hundred eighty (180) days written notice.
5. Either party can amend this Agreement by giving thirty (30) days written notice. The amendment becomes effective by signature of both Parties.

ARTICLE 9. COMPLIANCE WITH LAWS AND NON-DISCRIMINATION

The Parties agree that they 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. It is mutually agreed that all parties hereto shall be bound by the provisions of Title 49, CFR, Part 21, which was promulgated to effectuate the provisions of Title VI of the Civil Rights Act of 1964; Title 49, CFR, Part 26; Title 49, CFR, Part 27; Title 23, CFR, part 200 and part 710.45(b); and Executive Order 11246 titled “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (Title 41, CFR, Part 60).

Further, the Parties agree that they shall comply with Articles 20, 23, 24, 25, and 26 of the Planning Agreement.

ARTICLE 10. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Texas and all obligations hereunder of the Parties are performable in El Paso County, Texas. This Agreement is subject to

applicable federal, state, and local laws. Nothing in this Agreement may be construed as waiver of any right to contest any such law, ordinance, rule, regulation or asserted regulatory jurisdiction.

ARTICLE 11. NON-ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. Neither the City nor the MPO shall assign or subcontract any duty of this Agreement, except those already identified herein, without the written consent of the other party.

ARTICLE 12. SEVERABILITY

Should any provisions of this Agreement for any reasons be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

ARTICLE 13. ENTIRETY OF AGREEMENT

This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understanding, written or oral, between the Parties with respect to the matters contained herein.

EXECUTED in El Paso, Texas this _____ day of _____, 2023.

CITY OF EL PASO


ATTEST:

Oscar Leeser, Mayor


Laura D. Prine, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Josette Flores
Senior Assistant City Attorney



Robert Cortinas
Deputy City Manager &
Chief Financial Officer

APPROVED AS TO FORM:

EL PASO MPO:

Sergio M. Estrada, Legal Counsel for
El Paso MPO

Ricardo Samaniego, TPB Chair
Metropolitan Planning Organization

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FIRST AMENDED OPERATIONAL POLICY AGREEMENT BETWEEN THE CITY OF EL PASO AS FISCAL AGENT AND THE EL PASO METROPOLITAN PLANNING ORGANIZATION

This First Amended Operational Policy Agreement, as authorized by Title 23 United States Code (“USC”) Section 134, is entered into by and between the El Paso Metropolitan Planning Organization (“MPO”) and the City of El Paso (“City”) (collectively referred to as the “Parties”).

Commented [JLB1]: The parties in the 2014 Agreement are the City and the Transportation Policy Board (“TPB”) for the “El Paso Metropolitan Planning Organization (“MPO”)

RECITALS

WHEREAS, the Governor of the State of Texas has designated the El Paso Metropolitan Planning Organization (“MPO”) as the duly designated Metropolitan Planning Organization for the El Paso Urbanized Transportation Study Area; and,

WHEREAS, the Transportation Policy Board (“TPB”) is the policy-making body responsible for establishing regional transportation planning policies for the El Paso Urbanized Transportation Study Area; and,

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WHEREAS, the City serves as the fiscal agent for the MPO; and

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WHEREAS, MPO requests that the City continue to serve as the fiscal agent for the MPO; and

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WHEREAS, City believes it is in the public interest to assist MPO as its fiscal agent.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I. PURPOSE.

The purpose of this Operational Policy Agreement is to more particularly define and describe the roles and responsibilities between the City of El Paso (“City”) and the El Paso Metropolitan Planning Organization (“El Paso MPO”), in accordance with the Agreement entered into between the State of Texas, acting through the Texas Department of Transportation (the “Department”), the El Paso MPO, and the City, dated August 21, 2018 (the “Planning Agreement”). Pursuant to the Planning Agreement, City is designated as the Fiscal Agent for the El Paso MPO.

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The term of this Operational Policy Agreement begins upon execution by both parties and shall automatically renew each year unless terminated as herein provided in Article 8.

ARTICLE 3. DESCRIPTION OF SERVICES

The City agrees that in its role as Fiscal Agent it is responsible for providing the El Paso MPO with fiscal services; and that it will also continue to provide such administrative support service as timekeeping and payroll processing services, human resource services, information technology (“IT”) support, consulting and management services, purchasing and procurement services, and other staff support services.

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The City agrees that its responsibilities are as follows:

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A. Fiscal Agent Services

1. Provide the upfront funds, as identified by fiscal year in the Unified Planning Work Program (“UPWP”), to allow MPO to effectively and efficiently operate its transportation projects, plans, and programs. City will be reimbursed with MPO’s federal metropolitan planning funds.
2. Assess a usual and customary indirect cost on a periodic basis upon a “cost of services” study conducted by City. The Federal Transit Administration must approve the indirect cost rate. The indirect cost shall be posted to the City’s Accounting System within the fiscal year.
3. Promptly disburse federal metropolitan planning funds on behalf of MPO in the amounts specified by MPO, so long as MPO budget has sufficient funds to accommodate all payment requests.
4. Maintain one or more separate governmental funds under the supervision of the City Manager, or the City Manager’s designee. In carrying out the requirements of this Operational Policy Agreement, the City is responsible only in the capacity of a trust officer for the funds involved.
5. Maintain required accounting records for state and federal funds consistent with current state and federal requirements. Such records shall be available for inspection at the MPO offices or at other appropriate locations during the MPO’s normal business hours.

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B. Human Resource Services

1. All MPO staff (except for the Executive Director) shall be considered unclassified employees of the City of El Paso for the purposes of payroll, indemnification, and all fringe benefits, including retirement benefits, medical and life insurance, vacation, sick leave, holidays, and all other benefits usually extended to City employees.
2. Provide benefits to the MPO Executive Director and MPO staff that shall be the same as City normally provides its own employees. MPO shall reimburse City for costs incurred by City in providing these employee fringe benefits.

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3. Provide guidance and recommendations, through the Human Resource Director, or his or her designee, as requested by MPO Executive Director on personnel matters concerning MPO staff.
4. Post MPO job announcements, accept applications, and forwards all applications to MPO Executive Director.

C. Purchasing and Procurement Services

1. Provide purchasing and procurement services to MPO.
2. Maintain and follow written procurement and property management procedures that meet or exceed the requirements of 49 CFR 18.36 and the property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards and also the Texas Uniform Grant Management Standards for MPO related purchasing and procurement services.
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D. IT Support Services

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2. Provide on-going day-to-day technical support for MPO computers, phone system, network, site-to-site Virtual Private Network ("VPN"), as well as all other technical support MPO may require.
3. Provide internet access and service that meets the needs and requirements of the El Paso MPO.

E. Audit

1. Provide guidance and assistance as needed with annual audits.

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4. Prepare all required plans, programs, reports, data, and obtain required certifications in a timely manner.
5. Record all accounting transactions in accordance to Governmental Accounting Standards Board (GASB). Reconcile Net Position Accounts throughout the year and maintain appropriate backup to substantiate transactions. Backup should be maintained in accordance with the record retention policy of the City.
6. Abide by all City’s financial policies and procedures and provide assistance to Office of the Comptroller during the audit time. Assistance includes but is not limited to responding to audit request timely and accurately and providing grant related documentation when needed.
7. Enter into contracts and agreements in its own name. MPO is solely responsible for the accuracy of the records of funds it expends and those spent by its agents or consultants that contract with MPO.

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B. Human Resource Services

1. Assemble and maintain an adequate and competent staff with the knowledge and experience that will enable them to maintain to perform all appropriate MPO activities that are required by law. The MPO Executive Director shall have the sole authority to hire, supervise, evaluate, and terminate all MPO staff. MPO Executive Director will set the appropriate compensation for all MPO staff, including appropriate compensation ranges.
2. To the extent permitted by law, MPO will adopt the City’s personnel policies and procedures.
3. Reimburse City for costs incurred in providing employee benefits to MPO Executive Director and MPO staff.

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C. Purchasing and Procurement Services

1. Abide by purchasing and procurement policies outlined in all applicable federal and state laws and regulations.

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2. To the extent applicable, the El Paso MPO adopts the City’s purchasing and procurement policies.

D. IT Support Services

1. Abide by the City’s IT policies and procedures.

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1. Provide an independent audit in accordance with auditing standards generally accepted in the United States of America as applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); and the State of Texas Uniform Grant Management Standards, issued by the Texas Comptroller of Public Accounts. MPO staff will work with the auditors to provide all information necessary to complete the audit.

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B. Human Resource Services

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ARTICLE 8. TERMINATION

Termination of this Agreement shall be made in accordance with Article 16 of the Planning Agreement.

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ARTICLE 11. NON-ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. Neither the City nor the MPO shall assign or sub~~contract~~ any duty of this Agreement, except those already identified herein, without the written consent of the other party.

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ARTICLE 12. SEVERABILITY

Should any provisions of this Agreement for any reasons be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

ARTICLE 13. ENTIRETY OF AGREEMENT

This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understanding, written or oral, between the Parties ~~with respect to~~ the matters contained herein.

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EXECUTED in El Paso, Texas this _____ day of _____, 2023.

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CITY OF EL PASO

ATTEST: _____ Oscar Leeser, Mayor

Laura D. Prine, City Clerk

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APPROVED AS TO FORM: _____ **APPROVED AS TO CONTENT:** _____

Josette Flores
Senior Assistant City Attorney

Robert Cortinas,
Deputy City Manager &
Chief Financial Officer

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APPROVED AS TO FORM: _____ **EL PASO MPO:** _____

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Sergio M. Estrada, Legal Counsel for
El Paso MPO

Richard Samaniego, TPB Chair
Metropolitan Planning Organization

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Walter Miller, TPB Chair
Metropolitan Planning
Organization