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**Joint Powers Agreement**  
**Between the City of Las Cruces, Dona Ana County, and the Town of Mesilla**  
**For the Governance of the Mesilla Valley Metropolitan Planning Organization**

DFA  
OFFICE OF THE SECRETARY

This **Joint Powers Agreement** is entered into on this 1st day of July, 2013, by and between the **City of Las Cruces**, a municipal corporation, hereinafter referred to as “**City**”, the **County of Dona Ana**, a political subdivision, hereinafter referred to as “**the County**”, and the **Town Of Mesilla**, a municipal corporation, hereinafter referred to as the “**Town**”, all established entities in the State of New Mexico. This Agreement amends and replaces the previous Joint Powers Agreement between the City, County, and Town dated December 21, 1989, under which the **Mesilla Valley Metropolitan Planning Organization** (hereinafter referred to as “**MPO**”) has been operating under until the effective date listed above.

**WITNESSETH:**

**WHEREAS**, the Metropolitan Planning Organization (MPO) was designated by the Governor of the State of New Mexico through declaration on February 10, 1982; and

**WHEREAS**, the parties hereto agree that it is in the best interests of the City, the County, and the Town to maintain and continue a Metropolitan Planning Organization in order to conduct coordinated, continuing, and comprehensive transportation planning; and

**WHEREAS**, the MPO shall be constituted for the purpose of establishing, overseeing, and directing transportation policy and to accomplish general transportation planning for the City, County, and Town within the MPA; and

**WHEREAS**, pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the City, the County, and the Town are explicitly authorized to enter into a Joint Powers Agreement (hereinafter “**JPA**”) to establish and govern a separate agency to possess and exercise common powers of the parties; and

**NOW, THEREFORE**, in consideration of the mutual benefits that will accrue to the City, County, and Town, and the citizens thereof, the parties hereby agree as follows:

**(I)**

**THAT** this Joint Powers Agreement shall supersede and replace the previous Joint Powers Agreement dated December 21, 1989; and

**(II)**

**THAT** the MPO will carry out the purpose and all duties specified in 23 U.S.C. §450.300 and 49 U.S.C. § 5303.

## **I. ACRONYMS AND DEFINITIONS**

Consultation means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken.

Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective.

Federal Highway Administration (FHWA) – A division of the USDOT created in 1967, and authorized under Title 23 of U.S. Code to administer programs involving Federal-Aid, Federal Lands, research and development, international outreach, and National Highway Institute programs.

Federal Transit Administration (FTA) – A division of the USDOT created in 1991, and authorized under Title 49 of U.S. Code to administer programs to provide financial assistance to develop new transit systems and improve, maintain, and operate existing systems.

Metropolitan Planning Area (MPA) – The geographic area determined by agreement between the MPO and the Governor, in which the metropolitan planning process is carried out.

Metropolitan Planning Organization (MPO) – Created under 23 U.S.C. §134 for the purpose of transportation planning in metropolitan areas above 50,000 in population.

Policy Committee is the recognized authority of the MPO and is governed by its adopted bylaws.

United States Department of Transportation (USDOT) – The federal Department of Transportation, an agency of the Executive Branch of the United States Government.

U.S.C. – United States Code

## **II. ORGANIZATION.**

- A. The MPO shall consist of ten (10) voting members known as the Policy Committee:
  1. Three (3) elected officials representing the City.
  2. Three (3) elected officials representing the County.
  3. Three (3) elected officials representing the Town.
  4. District Engineer from the New Mexico Department of Transportation District One.
  5. Each member shall be entitled to one (1) vote.

6. In addition, the Federal Highway Administration (FHWA), and other appropriate ex-officio (non-voting) members may be established by resolution of the Policy Committee

7. The MPO Officer shall serve as staff for the MPO.

B. The function of the MPO shall be as follows:

1. Serve as a forum for cooperative decision-making on transportation-related matters.

2. Provide policy guidance and direction to the MPO staff and advisory committees in accordance with the transportation planning process.

3. Receive and act upon recommendations made to it by its established advisory committees.

4. Receive and consider input to the transportation planning process from the citizens of the MPA.

5. Determine the MPA boundaries in accordance with 23 U.S.C. §450.312.

6. Establish and maintain advisory committees, as needed.

7. Undertake such other activities as it may deem necessary and appropriate to carry out transportation planning for the MPA.

C. Duties of the MPO Officer:

1. The MPO Officer shall maintain official plans and records of the MPO and shall administer the daily operations of the MPO and prepare necessary reports as required by federal regulations.

2. The MPO Officer shall manage the budget and expenditures of the MPO planning funds as appropriated by the federal government and distributed by NMDOT in accordance with the Unified Planning Work Program (UPWP) as approved by the Policy Committee.

3. The MPO Officer shall be responsible for the development and update of the Metropolitan Transportation Plan, the Public Participation Plan, the Transportation Improvement Program, the List of Obligated Projects, and the Unified Planning Work Program for review by advisory committees and approval by the Policy Committee.

**III. FINANCIAL CONTRIBUTIONS.** The MPO shall receive federal transportation planning funds from the United States Department of Transportation (USDOT) Federal Highway Administration (FHWA) Section 112 funds and the Federal Transit Administration (FTA) Section 5303 funds, as administered and distributed by the New Mexico Department of Transportation (NMDOT) in accordance with an established allocation formula. The financial contribution amounts required from the parties under this JPA shall be in addition to and above the planning formula funds currently provided by the NMDOT.

**A. Contribution Amounts**

1. The City, County, and Town shall contribute proportionally to the required local match for Section 112 Planning Funds based on their proportion of their population of the MPO planning area. The population enumerated in the latest US Census shall be the population used.
2. The City shall contribute 100% of the required local match for Section 5303 funds.
3. The parties hereto shall determine on an annual basis the financial contribution of each party in the event that MPO operating funds need to exceed required local government matching funds and grant amounts distributed by NMDOT. The intention of this provision is to maintain similar percentage splits as outlined above in the event that there is a change in Section 112 distribution.

**B. Budget Procedures.** The City, County, and Town shall consider the budget prepared by the MPO Officer and shall notify the MPO Officer no later than April 30 if the entity has not included its share of the MPO budget in the preliminary budget submitted by that entity for the upcoming fiscal year. Not one of the following entities- the City, County, or Town, shall refuse to include its share of the budget proposed by the MPO in its preliminary and final budgets if the proposed budget is equal to or less than the budget for the MPO for the previous fiscal year. Additionally, each governing body shall include its share of the proposed budget if all the governing bodies agree to so increase the MPO budget.

**C. Payment of Contributions.** The County and Town shall pay their portion of the MPO budget in one payment due no later than August 1. The City will pay its portion of the MPO budget quarterly in four (4) equal payments due on October 1, January 1, April 1, and July 1 of each year in accordance with the Memorandum of Agreement with the NMDOT, whereby the City is the administrative, fiscal and operating agent of the MPO.

**D. Use of Excess Funds.** All excess funds remaining at the end of the fiscal year shall be rolled over for use during the next fiscal year.

**IV. FISCAL AGENT.** The City shall operate as the fiscal agent for the MPO in accordance with an approved Memorandum of Agreement (MOA). The duties of the fiscal agent shall be as follows:

**A. Financial Operations**

1. The fiscal agent shall bill and collect all revenues from the parties of this agreement for the MPO at the times and in the amounts as determined through the procedures in Article (III) herein.
2. The fiscal agent will maintain separate accounting designated specifically for the MPO revenue and operational accounts and related budgets.
3. The fiscal agent shall make all revenue or budget transfers and all disbursements for the MPO.
4. The fiscal agent will be responsible for preparing financial reports on at least an annual basis.

5. The fiscal agent shall strictly account for all receipts and disbursements made pursuant to this JPA, in accordance with the City of Las Cruces Procurement Code, and all other applicable laws and regulations.
6. The fiscal agent will provide procurement services for the MPO in accordance with the City of Las Cruces Procurement Code, consistent with New Mexico law.

**B. Personnel Administration**

1. **The City of Las Cruces in consultation with the Policy Committee shall hire and retain MPO staff and shall, at a minimum, hire and retain a MPO Officer for the purpose of daily administration of MPO activities.** All MPO employees will be employees of the City.
2. The fiscal agent will house all personnel files of MPO employees, and MPO staff shall be responsible for providing updates personnel documentation to the City to maintain personnel files.
3. The fiscal agent will provide human resource services, including payroll, for MPO employees.
4. Benefits and all policy matters related to personnel shall be provided by and governed by the fiscal agent.

**C. Compensation. The City may seek reimbursement for fiscal agent costs through the MOA.**

**V. NEW MEXICO TORT CLAIMS ACT.** As between the parties hereto, each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred as a result of the other party's acts or omissions in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The MPO and its "public employees" as defined in the New Mexico Tort Claims Act, and the Department and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

**VI. THIRD PARTY BENEFICIARY CLAUSE.** It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**VII. APPLICABLE LAW.** The Laws of the State of New Mexico shall govern this Agreement.

**VIII. SCOPE OF THE AGREEMENT.** This Agreement 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 Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**IX. TERM OF AGREEMENT.** This agreement shall be perpetual unless terminated or amended as hereinafter provided.

**A. Termination.** By mutual agreement, the parties hereto may terminate this Agreement by giving written notice at least ninety (90) days prior to the effective date of termination.

**B. Modifications.** This agreement may be supplemented or renegotiated as necessary to meet changing conditions and as recommended by the Policy Committee. The Policy Committee shall review and forward recommendations to all parties of this agreement upon the adoption of new transportation authorization bills by Congress. Also, upon a super-majority vote of the Policy Committee, recommendations shall be forwarded to all parties.

**X. SEVERABILITY OF PROVISIONS.** If any provision of this JPA is held invalid, the remainder of this JPA shall not be affected thereby and such remainder would constitute the JPA and the MPO would continue to operate under the remaining provisions, unless the provision held invalid was such as to make the fulfillment of the purpose of this JPA impossible or impracticable.

**XI. EFFECTIVE DATE AND AMENDMENTS.** This Agreement shall not be effective until approved by the Board of Commissioners for Dona Ana County, the City Council for the City of Las Cruces, the Board of Trustees for the Town of Mesilla, and the Department of Finance and Administration of the State of New Mexico. This Agreement cannot be amended except in writing signed by the parties to this JPA, and approved by the Department of Finance and Administration.

**THIS JOINT POWERS AGREEMENT** was approved by the City Council of the City of Las Cruces on May 6, 2013.

**THIS JOINT POWERS AGREEMENT** was approved by the Board of Commissioners of Dona Ana County on May 29, 2013


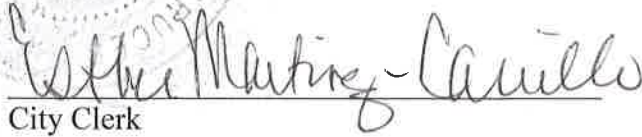
**THIS JOINT POWERS AGREEMENT** was approved by the Board of Trustees of the Town of Mesilla on May 13, 2013.

**IN WITNESS WHEREOF**, the Parties have hereunto affixed their signatures:

THE CITY OF LAS CRUCES, NEW MEXICO

By:  \_\_\_\_\_  
Mayor

ATTEST:

  
  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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

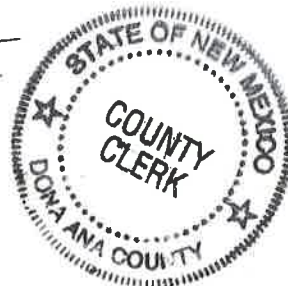
THE COUNTY OF DONA ANA, NEW MEXICO

By:  \_\_\_\_\_  
Chairman, Board of County Commissioners



ATTEST:

  
\_\_\_\_\_  
County Clerk



APPROVED AS TO FORM:

John W Caldwell  
County Attorney

THE TOWN OF MESILLA, NEW MEXICO

By: Nora L. Boney  
Mayor

ATTEST:

[Signature]  
Town Clerk

APPROVED AS TO FORM:

[Signature]  
Town Attorney

APPROVED:  
THE STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION

By: [Signature]  
Secretary