

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

This **Joint Powers Agreement** is entered into on this 15th day of November, 2021, by and between the **City of Las Cruces**, a municipal corporation, hereinafter referred to as "**the City**", the **County of Doña 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 July 1, 2013 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, the County, and the Town within the Metropolitan Planning Area; 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 referred to as "**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, the County, and the 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 July 1, 2013; and

**(II)**

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

## **I. ACRONYMS AND DEFINITIONS**

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

CFR – Code of Federal Regulations.

Federal Highway Administration (FHWA) – A division of the USDOT created in 1967 and authorized under Title 23 of U.S.C. 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 planning areas above 50,000 in population.

New Mexico Department of Transportation – the New Mexico Department of Transportation, an agency of the Executive Branch of the State of New Mexico Government.

Policy Board 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 Mesilla Valley MPO Policy Board:
  1. Three (3) elected officials representing the City of Las Cruces.
  2. Three (3) elected officials representing Doña Ana County.
  3. Three (3) elected officials representing the Town of Mesilla
  4. The District Engineer from the New Mexico Department of Transportation District One
  5. Each of the representatives from the City, the County, the Town, and NMDOT shall be entitled to one (1) vote.
  6. Per Mesilla Valley MPO Resolution 13-10, all sitting members of the New Mexico State Legislature who have constituents residing within the Mesilla Valley MPO MPA are ex-officio (non-voting) members of the Policy Board.
  7. In addition, representatives of the Federal Highway Administration (FHWA), and other appropriate ex-officio members may be established by resolution of the Policy Board.

8. The MPO Officer shall serve as an ex-officio member of the Policy Board in the role of Executive Secretary in addition to serving 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. A distinct position of MPO Officer shall be created and maintained. The MPO Officer shall maintain official plans and records of the MPO, shall administer the daily operations of the MPO, have supervisory responsibility over the activities of the other members of MPO Staff, and prepare or oversee the preparation of 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 Board. This shall include local match monies provided by the MPO member jurisdictions as well as any monies provided by the State of New Mexico or MPO member jurisdictions for MPO planning purposes beyond the match requirements.
  3. The MPO Officer shall be responsible for the development and update of the Metropolitan Transportation Plan (MTP), the Transportation Improvement Program (TIP), the Unified Planning Work Program (UPWP), the Public Participation Plan (PPP), the Title VI Plan, and the Annual Listing of Obligated Projects (ALOP) for review by advisory committees and approval by the Policy Board.
  4. The MPO Officer shall be responsible for reporting to the MPO Policy Board the findings of any NMDOT, FHWA, or FTA audits of the Mesilla Valley MPO and the MPO Officer shall be responsible for reporting the results of the annual Quality Assurance Review to the MPO Policy Board.

### **III. FINANCIAL CONTRIBUTIONS**

The MPO shall receive federal transportation planning funds from the USDOT FHWA Section 112 funds and FTA Section 5303 funds, as administered and distributed by the 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, the County, and the Town shall contribute proportionally to the required local match for Section 112 Planning Funds based on their proportion of their population within the MPA. 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 basis of the annual financial contribution by each party to this agreement will be tied to the decennial US Census for the Section 112 fund distribution. The City, the County, and the Town shall contribute Section 112 match moneys in proportion to their population within the Mesilla Valley MPO Planning Area. In the event that MPO operating funds need to exceed the grant amounts and local matching funds, the parties agree to maintain the same percentage splits as outlined above.

**B. Budget Procedures**

The City, the County, and the 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, the County, or the Town shall refuse to include its share of the budget proposed by the MPO in its preliminary or 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. Local Match Contributions**

The County and the Town shall pay their portion of the MPO budget in one payment due no later than December 31. 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**

As the UPWP is a biannual document, excess funds remaining at the end of the first fiscal year of a UPWP shall be rolled over for use during the next fiscal year. Excess funds remaining at the end of the second year of a UPWP are unable to be rolled over for use during the next fiscal year due to federal regulations.

**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 operation 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 by the dates outlined in the NMDOT Planning Procedures Manual (PPM) for the required MPO Reimbursement Packets on a quarterly basis, which the MPO Officer will submit to NMDOT. The fiscal agent will be responsible for preparing any other financial reports on an as needed 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. Additionally, the MPO Officer shall also maintain records of all receipts and disbursements.
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.
7. The City of Las Cruces Legal Department shall serve as legal counsel for the MPO.

**B. Personnel Administration**

1. The Policy Board shall participate in the designation of the MPO Officer. The specifics of the process used to make this designation will be carried out in accordance with an approved Memorandum of Agreement (MOA) between the Mesilla Valley MPO and the City of Las Cruces in its role as fiscal agent.
2. The Policy Board shall participate in the evaluation of the performance of the MPO Officer. How this participation will be carried out shall be specified in the above referenced MOA between the Mesilla Valley MPO and the City of Las Cruces.
3. All MPO employees will be employees of the City.
4. The City as fiscal agent will house all personnel files of MPO employees, and MPO Staff shall be responsible for providing updates to personnel documentation to the City to maintain said personnel files.
5. The City as fiscal agent will provide human resource services, including payroll, for MPO employees.
6. Benefits and all policy matters related to personnel shall be provided by and governed by the City as 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. EFFECTIVE DATE, AMENDMENTS, AND TERM**

This Agreement shall not be effective until approved by the Board of County Commissioners for Doña 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.

The term of this Agreement shall extend from the first of the month following this adoption and this Agreement shall be perpetual unless terminated or amended as hereinafter provided.

This Agreement supersedes all previous Joint Powers Agreements or other agreements or parts of other agreements which establish parameters for the operation of the Mesilla Valley Metropolitan Planning Organization.

**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. Modification**

This agreement may be supplemented or renegotiated as necessary to meet changing conditions as recommended by the Policy Board, NMDOT, FHWA, or FTA.

A majority vote by the MPO Policy Board is sufficient to trigger an amendment review process by the MPO. Additionally, FHWA, FTA, or NMDOT may submit a formal written request with proposed amendments to the MPO Policy Board requesting an amendment review process. Amendments developed through the amendment review process must be approved by a three-fourths majority of the MPO Policy Board. If proposed amendments receive a three-fourths majority approval by the MPO Policy Board, those amendments must be forwarded to the MPO member jurisdictions for consideration.

**C. Review**

This Agreement shall be reviewed by the Policy Board upon the adoption of a new transportation authorization bill by Congress. At minimum, this Agreement will be reviewed by the Policy Board every five years if no transportation authorization bill is passed in that time. This review can consist of a majority vote approval by the Policy Board if the consensus of the Policy Board is that this agreement is functioning satisfactorily and effectively. At time of review the Policy Board may initiate an amendment review process upon a majority vote of the Board.

**X. SEVERABILITY OF PROVISIONS**

If any provision of this Agreement is held invalid, the remainder of this Agreement 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. CONFLICT RESOLUTION**

In the event of a disagreement between the parties with respect to the duties or processes of metropolitan transportation planning, it is agreed that the parties will work in good faith to resolve any disagreements at the lowest possible level. If a disagreement cannot be resolved at the lowest possible level, the hereinafter Conflict Resolution Hierarchy will be followed. If other agencies are involved, personnel from equivalent organizational levels will be included in the conflict resolution process.

**Level 1 – Party to Party or Advisory Committees**

The parties to the disagreement agree to discuss the issue(s) and attempt to resolve the disagreement. This resolution can take place either party to party or at the appropriate MPO advisory committee at their next scheduled meeting, whichever is deemed more effective to achieve a speedy resolution to the conflict.

**Level 2 – Policy Board**

The parties to the disagreement agree to elevate the issue(s) and attempt to resolve the disagreement at the next scheduled meeting of the MPO Policy Board.

**Level 3 – Parties’ Governing Bodies**

The parties to the disagreement agree to discuss the issue(s) between the affected parties’ governing bodies.

**Level 4 – Mediation administered by FHWA or FTA**

The parties to the disagreement agree to accept a mediation process administered by FHWA or FTA as appropriate.

**THIS JOINT POWERS AGREEMENT** was approved by the City Council of the City of Las Cruces on November 15, 2021.

**THIS JOINT POWERS AGREEMENT** was approved by the Board of Commissioners of Doña Ana County on November 9, 2021.


**THIS JOINT POWERS AGREEMENT** was approved by the Board of Trustees of the Town of Mesilla on October 25, 2021.

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

THE CITY OF LAS CRUCES, NEW MEXICO

By:   
\_\_\_\_\_  
Mayor, City of Las Cruces

ATTEST:

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

APPROVED AS TO FORM:

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




THE COUNTY OF DONA ANA, NEW MEXICO

By:   
Chair, Board of County Commissioners

ATTEST:

  
County Clerk

APPROVED AS TO FORM:

  
County Attorney

**THE TOWN OF MESILLA, NEW MEXICO**

By: *Nora L. Busey*  
Mayor, Town of Mesilla

ATTEST:

*Cynthia Alvarez*  
Town Clerk

APPROVED AS TO FORM:

*Arce*  
Town Attorney

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

DocuSigned by:  
*Deborah K. Romero* 1/11/2022  
DC:2022A12040494  
Secretary