



Mesilla Valley Metropolitan Planning Organization

AMENDED AND RESTATED JOINT POWERS AGREEMENT FOR THE GOVERNANCE OF THE MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION

Adopted November 18, 2024

Mesilla Valley Metropolitan Planning Organization
700 North Main, Las Cruces, New Mexico 88001-1120
(575) 528-3070-telephone (575) 528-3155-fax <http://mesillavalleympo.org/>.

**AMENDED AND RESTATED JOINT POWERS AGREEMENT
FOR THE GOVERNANCE OF THE
MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION**

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT (“**JPA**”) is entered into by and between the City of Las Cruces (“**City**”), a municipal corporation, the County of Doña Ana (“**County**”), a political subdivision, and the Town of Mesilla (“**Town**”), a municipal corporation, all established as public entities in the State of New Mexico. This JPA amends and replaces the previous Joint Powers Agreement, dated November 15, 2021, under which the Mesilla Valley Metropolitan Planning Organization (“**MPO**”) has been operating until the effective date of this JPA.

WITNESSETH:

WHEREAS, Title 23 United States Code (“**USC**”) 134, as amended, requires that a metropolitan planning organization be designated for each urbanized area with a population of more than 50,000 population by agreement among the governor and units of general-purpose local government, which together represent at least 75 percent of the affected population; and

WHEREAS, the MPO was designated by the Governor of the State of New Mexico through declaration on February 10, 1982; and

WHEREAS, the purpose of the MPO is to ensure that current and future expenditures on transportation projects and programs are based on a continuing, cooperative, and comprehensive planning process throughout the Metropolitan Planning Area (“**MPA**”); and

WHEREAS, the parties agree that it is in their best interests to maintain and continue the MPO in order to conduct coordinated, continuing, and comprehensive transportation planning throughout the MPA; and

WHEREAS, the parties recognize and agree that the MPO shall be a separate and independent body from its member entities; and

WHEREAS, the parties agree that the City shall be the Fiscal Agent for the MPO; and

WHEREAS, pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7, as amended, the parties are authorized to enter into this JPA; and

WHEREAS, this JPA shall supersede and replace the parties’ Joint Powers Agreement dated November 15, 2021; and

NOW, THEREFORE, in consideration of the mutual benefits that will accrue to the parties, the parties agree that they shall continue the MPO in accordance with the following terms:

AGREEMENT

I. SCOPE OF AGREEMENT

A. Authority: It is the intention of the parties that under the terms of this JPA the MPO shall continue to function pursuant to the authority granted by all applicable federal and state laws and regulations. The MPO is hereby granted the authority to perform all acts necessary to fulfill the purposes of this JPA.

B. Purposes: The MPO shall serve as a forum for comprehensive, continuing, and cooperative decision-making in transportation-related matters between the parties and among other federal and state agencies. The MPO shall also assist other governmental agencies and the public by providing transportation-related information and data gathered by the MPO.

II. EFFECTIVE DATE, WITHDRAWAL, AND TERMINATION

A. Effective Date: This JPA becomes effective upon the signature of all parties. The effective date is the date the last party signed the JPA on the signature page below, and once it has been approved by the New Mexico Department of Financial Affairs. This JPA shall automatically renew each year, subject to the appropriation of funds, and until it is terminated by the parties as provided below.

B. Withdrawal: A party may withdraw from this JPA by giving the other parties one hundred twenty (120) days' written notice.

C. Termination: This JPA may be terminated by mutual agreement of any two of the three parties, as evidenced by written approval of the governing bodies or authorized officials of those two parties, and by giving ninety (90) days' written notice prior to the effective date of termination to the New Mexico Department of Transportation ("**NMDOT**") and all parties to the JPA.

III. MPO ORGANIZATIONAL STRUCTURE

A. Governing Board: The MPO is governed by the MPO Governing Board ("**Governing Board**"). The Governing Board is the recognized governing authority for the MPO and derives its authority from this JPA, the MPO Bylaws, and all applicable federal and state laws and regulations, including 23 USC 134 and 23 CFR 450.

B. Membership: The Governing Board is made up of the following ten (10) voting members:

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, and
4. The New Mexico Department of Transportation District One Engineer.

Each voting member (identified above) shall be entitled to one (1) vote.

C. Ex Officio (non-voting) Members:

1. Per MPO Resolution 13-10, all sitting members of the New Mexico State Legislature who have constituents residing within the MPA are ex-officio (non-voting) members of the Governing Board.
2. Representatives or officials of the Federal Highway Administration (“FHWA”), Federal Transit Administration (“FTA”), New Mexico Department of Transportation (“NMDOT”), and other appropriate federal or state ex-officio members may be established by action of the Governing Board.

D. Executive Director:

1. An Executive Director will be employed by the Governing Board to oversee and direct the MPO’s daily operations and to ensure the MPO’s compliance with all applicable state and federal laws and regulations.
2. The MPO Executive Director shall serve as an ex-officio member of the Governing Board as Executive Secretary and also serve as staff for the MPO.

E. Fiscal Agent: The City shall be the MPO’s Fiscal Agent.

IV. FUNCTIONS OF THE MPO

A. MPO Functions: The MPO shall perform the following functions:

1. Serve as a forum for continuing, cooperative, and comprehensive decision-making on the transportation planning process and all other related matters throughout the Metropolitan Planning Area (“MPA”).
2. Develop the required work products listed in the NMDOT Planning Procedures Manual, as amended, in accordance with the most current federal laws and regulations authorizing transportation funding. For example, the following work products are required by federal law and regulation 23 USC §§ 104 and 134 and 23 CFR Part 450 and defined in the MPO Planning Process:

- a) Develop and update every five years the Metropolitan Transportation Plan (“MTP”), the long-range transportation plan for the MPA over the next twenty-five (25) years.
- b) Develop and update every four (4) years a Public Participation Plan (“PPP”) and Title VI Plan in order to outline the public involvement process in plans and studies related to the MTP.
- c) Develop and periodically update the Transportation Improvement Plan (“TIP”), which lists projects and programs with identified funding for the purpose of implementing the MTP.
- d) Develop an annual List of Obligated Projects.
- e) Develop a biennial Unified Planning Work Program (“UPWP”) with Budget; an annual Performance and Expenditure Report; and Quarterly Reports with Invoices for the purpose of setting out and reporting on the work activities of the MPO staff.
- f) Following the conclusion of each decennial census, update the MPO MPA map with a smoothed urbanized area boundary map and roadway functional classification map.
- g) Develop Transportation System Performance Measures, Targets, and Evaluation Criteria that addresses, at a minimum, the current seven National Performance Goals, or goals within the most current long-term highway authorization legislation, including, but not limited to, safety, infrastructure condition, congestion reduction, system reliability, freight movement and economic vitality, environmental sustainability, and reduced project delivery days.
- h) Undertake all other activities as the MPO may deem necessary and appropriate to carry out transportation planning activities for the MPO MPA.

V. FUNCTIONS OF THE MPO GOVERNING BOARD

A. Functions of the MPO Governing Board: The Governing Board is the policy body that is the forum designated under 23 USC § 134 with the responsibility for establishing the overall transportation policy for the MPO and for making required approvals. The Governing Board is comprised of those governmental entities and agencies identified in the original designation agreement and those entities or agencies subsequently added to the membership of the Governing Board.

B. The Governing Board is the governing body of the MPO. As such, it is responsible for the following:

1. Overseeing and ensuring the MPO's compliance with all federal and state regulations that pertain to the MPO's purposes and responsibilities.
2. Making and entering into contracts, agreements, or commitments in its own name.
3. Adopting bylaws, policies, and procedures to govern the MPO.
4. Exercise sole responsibility to hire, compensate, supervise, evaluate, and terminate the MPO Executive Director.
5. Provide planning policy direction to the MPO Executive Director.
6. The Governing Board will not be responsible for or directly involved in the MPO's daily operations, which are the responsibility of the Executive Director.

VI. FUNCTIONS OF THE MPO EXECUTIVE DIRECTOR

A. **Functions of the Executive Director:** The functions of the Executive Director are as follows:

1. Serve in a full-time position and shall take planning policy direction from and be accountable to the Governing Board. The Executive Director shall report to the Governing Board.
2. Oversee and direct the MPO's daily operations and exercise sole responsibility for hiring, compensating, supervising, disciplining, evaluating, and terminating MPO staff. All MPO staff and personnel shall report to the Executive Director.
3. Maintain the MPO's official documents and records.
4. Develop and oversee the preparation and completion of all transportation planning work required by state or federal law, including, but not limited to, the UPWP, MTP, PPP, the Title VI Plan, the List of Obligated Projects, and TIP.
5. Oversee and direct the MPO's daily operations.

6. Prepare and manage the MPO budget and oversee the expenditure of MPO funds as appropriated by the federal government and distributed by NMDOT in accordance with the UPWP. This includes the local match monies provided by the MPO member entities as well as any other monies provided by the State of New Mexico or MPO member entities for the MPO planning purposes beyond the match requirements.

7. Report to the Governing Board all findings of NMDOT, FHWA, or FTA audits of the MPO and shall be responsible for reporting the results of the annual Quality Assurance Review to the Governing Board.

VII. FISCAL AGENT

A. **Fiscal Agent:** The City shall be the Fiscal Agent for the MPO. The Fiscal Agent is responsible for providing the MPO with fiscal services and such administrative support services as timekeeping and payroll processing, human resources, information technology services and support, consulting and management services, purchasing and procurement services, and all other professional, technical, administrative, and clerical services that may be required or necessary to manage the business and affairs of the MPO and to carry out the purposes of this JPA. All expenditures by the MPO shall be done in accordance with the requirements of the New Mexico Procurement Code and all other applicable federal and state requirements.

B. **Employment Benefits:** All MPO employees (except for the Executive Director) shall be considered employees of the City for 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. The City will also provide these benefits to the MPO Executive Director. The MPO shall reimburse the City for the costs incurred in providing these benefits to MPO staff and the Executive Director.

C. **Agreement:** The Fiscal Agent and the MPO shall prepare and execute a separate agreement describing the Fiscal Agent's duties and responsibilities in greater detail. In addition to this JPA, the City shall operate as the Fiscal Agent for the MPO in accordance with the separate agreement entered into by the Fiscal Agent and MPO.

VIII. FINANCIAL CONTRIBUTIONS

A. **Federal Funds:** 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 MPO may also apply for and receive funds from other funding sources.

B. Local Funds: 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.

C. Local Match Contribution Amounts: Each party shall contribute proportionally to the required local match for FHWA Section 112 Planning Funds based on the proportion of their population within the MPA. The population enumerated in the latest US Census shall be the population used.

1. The City shall contribute 100% of the required local match for FTA Section 5303 funds.

2. 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. If 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, or as otherwise agreed to by the parties depending on the funding source.

3. 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.

4. **Excess UPWP 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 fiscal year of a UPWP are unable to be rolled over for use during the next fiscal year due to federal regulations.

D. Budget Procedures: The parties shall consider the budget prepared by the Executive Director and shall notify the Executive Director 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 party's governing body shall include its share of the proposed budget if all the governing bodies agree to so increase the MPO budget.

IX. LIABILITY

A. New Mexico Tort Claims Act: Nothing in this JPA is intended to nor shall be deemed to waive the rights of the parties to claim the privileges and immunities granted to them under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* ("**NMTCA**"), as amended. Furthermore, the parties intend that (1) immunity from liability for tortious conduct under the NMTCA, Section 41-4-4(A) will apply to all conduct relating to this JPA; and (2) only the waivers of immunity from liability under NMTCA, Sections 41-4-4 will apply. 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.

B. Non-Waiver of Immunity: This JPA does not waive immunity from liability for the tortious conduct of any party, or the party's directors, officers, representatives, agents, and employees directly or indirectly relating to this JPA granted to them under the New Mexico Tort Claims Act, or any other applicable law or regulation. Nothing in this JPA shall be deemed or interpreted as a waiver of sovereign or governmental immunity.

C. Each party shall be responsible for fiscal or other sanctions occasioned as a result of its own violation of any requirements applicable to performing under this JPA.

X. THIRD PARTY BENEFICIARY CLAUSE

A. The parties agree that it is not intended by any of the provisions of any part of this JPA to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the JPA 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 JPA.

XI. GOVERNING LAW AND VENUE

A. Governing Law: This JPA shall be governed by and constructed in accordance with the laws of the State of New Mexico. Nothing herein shall be interpreted as a waiver of the parties' governmental privileges and immunities.

B. Venue: Venue for any action arising under this JPA shall lie exclusively in Dona Ana County, New Mexico.

XII. AMENDMENTS

A. This JPA shall not be altered, modified, changed, or amended except by written instrument executed by the parties and approved the New Mexico Department of Finance and Administration.

B. The parties may amend, modify, supplement, or renegotiate this JPA as necessary to meet changing conditions or legal requirements.

C. Legislative or Periodic Review: This JPA shall be reviewed by the Governing Board upon the adoption by Congress of legislation applicable to the MPO. Periodically, but at minimum every five (5) years, the parties shall review the JPA for necessary updates or changes. This legislative or periodic review can consist of a majority vote approval by the Governing Board that this JPA is satisfactory. At the time of review, the Governing Board may initiate an amendment review process upon a majority vote of the Board.

D. Amendment Review Process: A majority vote by the Governing 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 Governing Board requesting an amendment review process. Amendments developed through the amendment review process must be approved by a three-fourths majority of the Governing Board. If proposed amendments receive a three-fourths majority approval by the Governing Board, those amendments must be forwarded to the MPO member entities for consideration.

XIII. SEVERABILITY OF PROVISIONS

A. If any provision of this JPA is held invalid for any reason, the invalidity shall not affect other provisions of the JPA, and the JPA can be given effect without the invalid provision, and to this end the provisions of this JPA are severable.

XIV. CONFLICT AND DISPUTE RESOLUTION

A. This section shall apply to conflicts and disputes relating to matters covered by the subject to this JPA or the parties' performance of duties and responsibilities under this JPA. The parties agree that if a conflict or dispute arises, they will work in good faith to attempt to resolve any conflict or dispute by first engaging in Level 1 of the Conflict Resolution Hierarchy described below.

B. Conflict Resolution Hierarchy: In order to resolve conflicts or disputes under this section, the parties agree to progressively follow the levels described below until all levels in the Conflict Resolution Hierarchy have been employed by the parties in good faith:

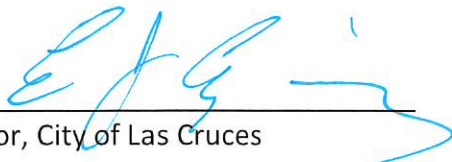
Level 1 – Party to Party or Advisory Committees: The parties to the disagreement agree to discuss the issue(s) and attempt to resolve the disagreement. This resolution can take place either party to party or at the appropriate MPO advisory committee at their next scheduled meeting, whichever is deemed more effective to achieve a speedy resolution to the conflict.

Level 2 – Governing 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 Governing 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.

THE CITY OF LAS CRUCES, NEW MEXICO

By: 
Mayor, City of Las Cruces

ATTEST:

By: 
Las Cruces City Clerk

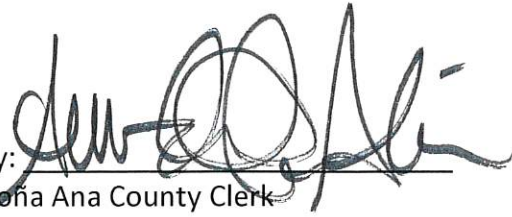
APPROVED AS TO FORM:

By: 
Las Cruces City Attorney

THE COUNTY OF DOÑA ANA, NEW MEXICO

By: 
Chair, Doña Ana County Board of Commissioners

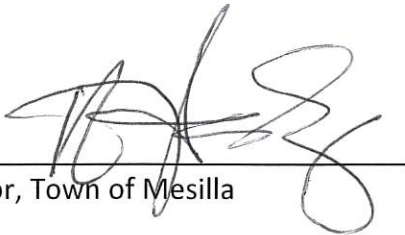
ATTEST:

By: 
Doña Ana County Clerk

APPROVED AS TO FORM:

By: 
Doña Ana County Attorney

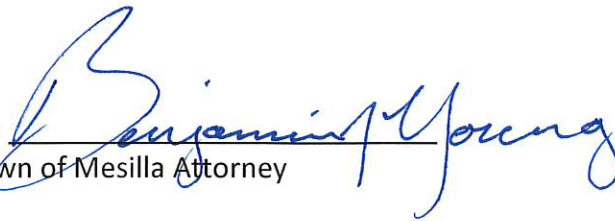
THE TOWN OF MESILLA, NEW MEXICO

By: 
Mayor, Town of Mesilla

ATTEST:

By: 
Town of Mesilla Clerk

APPROVED AS TO FORM:

By: 
Town of Mesilla Attorney

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

DocuSigned by:
By:  2/11/2025
0EB4D958A69A432...
Cabinet Secretary, New Mexico Department of Finance and Administration