

**MEMORANDUM OF AGREEMENT
DEFINING THE ROLES AND RESPONSIBILITIES OF THE CITY OF LAS CRUCES AND
THE MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION**

This Memorandum of Agreement (“**MOA**”) is entered into between the City of Las Cruces (“**City**” or “**Fiscal Agent**”), a State of New Mexico home rule municipality, and the Mesilla Valley Metropolitan Planning Organization (“**MPO**”), a federally-mandated, state-designated public agency charged with fulfilling the federal transportation planning requirements of 23 CFR 450.300 and 49 USC 5303 in the Mesilla Valley Metropolitan Planning Area in Central Doña Ana County, New Mexico.

WITNESSETH

WHEREAS, THE Las Cruces Metropolitan Planning Organization was designated by the Governor of the State of New Mexico through a declaration on February 10, 1982; and

WHEREAS, the Las Cruces Metropolitan Planning Organization was renamed to be the Mesilla Valley Metropolitan Planning Organization (“**MPO**”) via the Joint Powers Agreement of 2013; and

WHEREAS, the MPO Governing Board (“**Governing Board**”) is the policy-making body responsible for governing the actions of the MPO; and

WHEREAS, the MPO and the City, along with Doña Ana County, and the Town of Mesilla, are parties to the Amended and Restated Joint Powers Agreement, dated November 18, 2024 (“**2024 JPA**”), whereby the parties agreed that the MPO should continue to serve as the designated MPO for the Mesilla Valley Planning Area; and

WHEREAS, in accordance with the 2024 Joint Powers Agreement (**JPA**), the City has been designated as the Fiscal Agent for the MPO; and

WHEREAS, the City and the MPO now desire to more fully determine and describe their duties and responsibilities under the 2024 JPA with respect to each other, including the City’s duties and responsibilities as Fiscal Agent to the MPO.

NOW, THEREFORE, in consideration of the mutual benefits that will accrue to the parties, the parties agree as follows:

AGREEMENT

I. PURPOSE

- A. The purpose of this MOA is to more fully determine and describe the parties’ duties and responsibilities under the 2024 JPA by cooperatively determining and establishing the City’s role as the Fiscal Agent for the MPO. As Fiscal Agent the City shall enable

and assist the MPO to effectively carry out the federal transportation planning requirements of 23 CFR 450.300 and 49 USC 5303.

II. TERM AND TERMINATION

- A. This MOA becomes effective upon the signature of all parties. The effective date is the date the last party signed the MOA on the signature page. The term of this MOA shall automatically be renewed each year unless canceled as provided herein.
- B. This MOA may be terminated by the mutual consent of the parties with at least ninety (90) days written notice to all other parties to the Agreement.
- C. Upon delivery of the written notice, neither party may nullify its obligations already incurred for performance or failure to perform prior to the written date of termination.
- D. Upon the termination of this MOA, for whatever reason, the MPO may pursue the appointment of another fiscal agent.

III. POWERS, DUTIES, AND RESPONSIBILITIES OF MPO GOVERNING BOARD

- A. In accordance with all applicable laws, regulations, and bylaws, the Governing Board will:
 - 1. Review and, if appropriate, adopt the Fiscal Agent's policies, procedures, guidelines, manuals, and handbooks that are determined by the Governing Board to be necessary to carrying out the purpose of this MOA and the 2024 JPA.
 - 2. Take all other appropriate actions deemed necessary or beneficial to performing its duties as the governing body of the MPO.
 - 3. Other Powers, Duties, and Responsibilities of the MPO Governing Board are covered in the 2024 JPA.

IV. POWERS, DUTIES, AND RESPONSIBILITIES OF MPO EXECUTIVE DIRECTOR

- A. In accordance with all applicable laws, regulations, and bylaws, the Executive Director will:
 - 1. Assist the Fiscal Agent in carrying out its duties and responsibilities under this MOA and the 2024 JPA, which includes, but is not limited to, dedicating MPO staff time for interactions with the Fiscal Agent's departments that provide services to the MPO.

2. Review and, if appropriate, act to comply with Fiscal Agent's regular budget cycles following the procedures and submittal deadlines established by the Fiscal Agent.
3. Ensure that the MPO shall comply with the Fiscal Agent's Procurement Code and the Purchase Card Manual.
4. Take all other appropriate actions deemed necessary or beneficial to performing their duties as the Executive Director.
5. Arrange for the MPO to budget and pay for access to the City's designated training system to obtain training and permission access to the City's training programs.
6. Other Powers, Duties, and Responsibilities of the MPO Executive Director are covered in the 2024 JPA.

V. POWERS, DUTIES, AND RESPONSIBILITIES OF FISCAL AGENT

- A. In accordance with all applicable laws, regulations, and bylaws, the Fiscal Agent will provide the following financial services:
1. Maintain fiscal records in accordance with generally accepted accounting principles and procedures.
 2. Maintain a uniform system of accounts, consistent with the current City account structures with additional accounts, as necessary.
 3. Provide procurement support and services to the MPO; however the final selection of vendors and consultants will be the responsibility of the MPO.
 4. Provide support to the State and serve as the MPO's Chief Purchasing Officer (CPO).
 5. Administrate and coordinate the MPO's purchase card program to ensure compliance with the Fiscal Agent's purchase card program policies.
 6. Timely process the MPO's approved payments to contractors and/or vendors and/or operators in accordance with contract obligations and in compliance with the Fiscal Agent's work processes and requirements.
 7. Provide accountability of all disbursements and advise the MPO regarding disbursements that need correction or additional information based on information provided by the MPO.
 8. Record accounts receivable in general ledger account based on the information provided by the MPO.
 9. Prepare unaudited quarterly financial reports for the MPO to submit to the New Mexico Department of Transportation for reimbursement to the Fiscal Agent for MPO costs.
 10. Provide budget forms and support to the MPO for annual and mid-year budget preparation and review.
 11. Record and tag the MPO's fixed assets in the City's Enterprise Resource Planning system in accordance with the City's Capital Policy.

12. Conduct biennial physical inventory of the MPO's fixed assets and record an inventory report, certified by the MPO, in accordance with the NM State Audit Rule.
13. Bill and collect the MPO match monies from the City of Las Cruces, Doña Ana County, and the Town of Mesilla.
14. Review and post all revenue or budget adjustments for the MPO as directed by the Executive Director or their designee consistent with the authority granted by the Board.
15. Provide training for permissions and use of Fiscal Agent's financial modules of the Enterprise Resource Planning system as provided for the Fiscal Agent's employees utilizing methods determined by the Fiscal Agent.
16. Cooperate with and provide any necessary documentation for any audits performed by the State of New Mexico or Federal Government on the MPO.
17. Comply with the single audit requirements per 2 CFR 200.501 and the State of New Mexico Department of Justice requirements.

B. The Fiscal Agent will provide the following human resources services to the MPO:

1. Provide MPO employees access to benefits administration and enrollment opportunities for the Fiscal Agent's insurance, to include only the following: employee health, dental, vision, and life insurance plans, as provided for City employees utilizing forms and methods determined by the Fiscal Agent.
2. Provide applicable onboarding of newly hired employees.
3. The Fiscal Agent shall house all personnel files of MPO employees. The Executive Director shall be responsible for providing updated personnel documentation to the Fiscal Agent to maintain said files.
4. The Fiscal Agent shall provide human resource in-processing and maintenance for MPO employees' payroll system based upon the payroll data provided by the Executive Director.
5. Human Resources will conduct and record applicable pre-employment screening to include background checks and drug testing.
6. Maintain payroll records based on data entry performed by the MPO, withholding deposits, payroll taxes, and other information.
7. Make payments on behalf of the MPO and its employees for all state and federal taxes associated with the operations of the MPO, including but not limited to, income taxes and other withholdings provided for employees.
8. Issue bi-weekly payroll through direct deposits or other methods determined by the Fiscal Agent.
9. Make payments on behalf of the MPO for employees and employer's contributions to employee benefit plans, to include the Public Employee Retirement Association (PERA).
10. Comply with all state and federal reporting and payment requirements. Perform payroll payments using City software programs. No special software accommodations for changes will be provided. Although these services are to

be provided using standard City forms and checks, it is understood that the checks and payments issued hereunder are issued on behalf of the MPO and not the City.

11. Provide training for permissions and use of the Fiscal Agent's Human Capital Management modules of the Enterprise Resource Planning system as provided for the Fiscal Agent's employees utilizing methods determined by the Fiscal Agent.

C. The Fiscal Agent will provide the following risk management services to the MPO:

1. Administration of a risk management program, to include pre-employment testing, random testing, post-accident testing, and reasonable suspicion testing.

D. The Fiscal Agent will provide the following information technology services to the MPO:

1. Purchasing standards for all computers.
2. Information Technology Policies.
3. Network support for all computer systems that are compliant with the Fiscal Agent's technology standards.
4. Provide remote support and maintenance of computers that are part of the Fiscal Agent's active directory domain and are compliant with the Fiscal Agent's technology standards.
5. Provide remote support and maintenance of city-approved software for computers that are part of the Fiscal Agent's active directory domain.
6. Supply, support, and maintain phones directly connected to the Fiscal Agent's phone system.
7. Support and maintain fiber optics cabling and/or microwave systems that are used to connect to the Fiscal Agent's network.
8. Provide technology governance through the software acquisition process for software used on the City's network.
9. Provide end user licensing for network access, computer operating systems, information security software, and the Fiscal Agent's office productivity suite.
10. Provide end user account and administrative support for the Fiscal Agent's Enterprise Resource Planning system.
11. Provide training to comply with the Fiscal Agent's cyber security training requirements as provided for City employees utilizing methods determined by the Fiscal Agent.

E. The Fiscal Agent will provide the following fleet services to the MPO:

1. Procurement of vehicles, including acquisition of asset tags and state license plates.

2. Repair, maintenance, and maintenance log of work performed.
- F. The Fiscal Agent reserves the right to audit MPO activities related to City policies adopted by the MPO. The results of those audits must be shared with the New Mexico Department of Transportation's Multimodal Planning & Programs Bureau and the New Mexico Department of Transportation's Transit Bureau.

VI. SERVICES NOT PROVIDED BY FISCAL AGENT

- A. The Fiscal Agent will not be responsible for providing the following services to the MPO:
1. Training services not described in this MOA or the 2024 JPA.
 2. Benefits, programs, or services to MPO employees not described in this MOA or the 2024 JPA.
 3. Legal services, to include, but not limited to, representation in threatened or ongoing litigation, legal advice, procurement review, contract review, and/or revision, or representation in any administrative adjudicatory hearing. There shall be no Attorney-Client relationship between the City Attorney and the MPO.
 4. Employee assistance and wellness programs, and EEO and ADA services determined by Fiscal Agent to be available only to City employees.
 5. Operation or maintenance for MPO office facilities, when those office facilities are not owned or operated by the Fiscal Agent.

VII. COMPENSATION

- A. The Fiscal Agent requests that its compensation for services provided to the MPO be a fixed amount to be determined annual by the Fiscal Agent (the "Fiscal Agent Fee"). Therefore, the Fiscal Agent and the MPO agree to the following:
1. The Fiscal Agent will provide notice to the MPO of the proposed amount of the Fiscal Agent Fee no later than January 31 of each year; and
 2. The proposed Fiscal Agent Fee will not go into effect until it has been reviewed and approved by the MPO Governing Board; and
 3. The MPO must provide written notice to the Fiscal Agent, no later than sixty (60) days after the Fiscal Agent delivers written notice of the proposed Fiscal Agent Fee, of its decision to approve or reject the Fiscal Agent Fee; and
 4. The Fiscal Agent Fee must comply with all applicable state and federal laws and regulations.
- B. The Fiscal Agent and MPO further agree that if the Fiscal Agent fails to deliver written notice of the proposed Fiscal Agent Fee by January 31 the Fiscal Agent Fee will remain unchanged for the next fiscal year, unless the parties agree in writing otherwise.

VIII. TORT CLAIMS ACT

- A. The parties and their “public employees” as defined in the New Mexico Tort Claims Act, NMSA 1978, 41-4-1, et seq., do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this MOA modifies or waives any provision of the New Mexico Tort Claims Act.

IX. STATUS OF FISCAL AGENT AND MPO

- A. The Fiscal Agent and MPO are separate legal entities. The Fiscal Agent’s agents and employees are not employees or agents of the MPO. The MPO’s agents and employees are not employees or agents of the Fiscal Agent. No powers of the MPO, expressed or implied, shall be granted to the Fiscal Agent on behalf of the MPO, excepting those set for herein. In any event, the City’s role as Fiscal Agent for the MPO shall be limited to those purposes consistent with the 2024 JPA, this MOA, and all applicable state and federal laws and regulations.

X. MPO ASSETS

- A. All assets of the MPO, whether real or personal property, including those that may be transferred to it by MPO member entities, shall be owned by the MPO.

XI. THIRD PARTY BENEFICIARIES

- A. The parties do not intend to create any right, title, or interest in or for the benefit of any person other than the Fiscal Agent and the MPO. No person shall claim any right, title, or interest under this MOA or seek to enforce this MOA as a third-party beneficiary of this MOA.

XII. LIABILITY

- A. Upon the effective date of this MOA, and only after the date and time of the last signature to this MOA, the MPO will be solely responsible for all liabilities related to their premises and the actions of their officers, members, and employees while within the course and scope of their employment or operation.
- B. The Fiscal Agent will be solely responsible for any claim, action, lawsuit, liability, loss, injury, or damage asserted against the MPO arising from any error, omission, criminal act, or negligent act that occurred prior to the effective date and time of this MOA.
- C. Notwithstanding the foregoing, nothing in this MOA shall be construed as a waiver by the Fiscal Agent or the MPO, or of their respective employees, of its statutory

immunity or limitations of liability to include, but not be limited to, those provisions set forth in the New Mexico Tort Claims Act.

XIII. INSURANCE

- A. The MPO shall procure and maintain for the duration of this MOA insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of their work or the work of their agents, representatives, employees, and subcontractors. The minimum scope and limit of insurance shall be at least as broad as the Tort Claim Act of New Mexico.
- B. Coverage should include the following:
 - 1. Commercial General Liability of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate limit. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury. Coverage must be on an occurrence form. The City of Las Cruces, Doña Ana County, and the Town of Mesilla must be additional insureds. Waiver of Subrogation must be provided. Coverage must be primary and non-contributory.
 - 2. Commercial Auto Liability of not less than \$1,000,000 combined single limit. Coverage must be for "Any Auto, or Owned Autos, Hired Autos, and Non-Owned Autos.
 - 3. Workers Compensation Coverage at Statutory Limits and Employer Liability not less than \$1,000,000 per injury or disease. Subrogation must be waived.
 - 4. Employment Practice Liability of not less than \$1,000,000 per claim.
- C. The MPO shall provide evidence of the above listed insurance by way of an Acord 25 certificate of insurance with endorsements meeting requirements listed above.

XIV. AMENDMENT

- A. This MOA may be amended through the approval of the MPO Governing Board and the Las Cruces City Council. This MOA may not be altered, changed, or amended except in writing and signed by both parties.

XV. DISPUTE RESOLUTION

- A. Should a dispute arise between the parties regarding this MOA, the dispute resolution process is governed by the federally mandated dispute resolution process contained within the 2024 JPA.

XVI. APPLICABLE LAW AND VENUE

- A. The MOA and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico, without regard to conflicts of law principles. Venue for mediation and arbitration shall be within the Third Judicial District, County of Doña Ana, State of New Mexico.

XVII. NOTIFICATION

- A. All notices required or permitted under this MOA shall be in writing and shall be deemed sufficiently served if served by Certified Mail addressed as follows:

TO: Mesilla Valley MPO
201 N. Church St., Suite B-100
Las Cruces, NM 88004
ATTN: Executive Director

With Copies TO: Kemp Smith Law
221 N. Kansas, Suite 1700
El Paso, TX 79901
ATTN: Sergio Estrada

TO: City of Las Cruces
700 N. Main
Las Cruces, NM 88001
ATTN: City Manager

With Copies TO: Las Cruces City Attorney
700 N. Main
Las Cruces, NM 88001
ATTN: City Attorney

XVIII. MISCELLANEOUS PROVISIONS

- A. Headings: The headings of the various sections of this MOA are inserted only for convenience or reference and are not intended nor shall they be construed to modify, define, limit, or expand the intent of the Parties.
- B. Severability: If any clause or provision of this MOA is held to be illegal, invalid, or unenforceable, then it is the intent of the Parties that the remainder of the MOA shall remain in full force and effect.
- C. Sole Agreement: This MOA constitutes the entire understanding and agreement between the Parties hereto and supersedes all prior and contemporaneous

agreements, whether oral or written, between the parties relating to the subject matter hereof, with the exception of the 2024 JPA.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures and approved this agreement on this 18th day of November, 2024.

THE CITY OF LAS CRUCES, NEW MEXICO

By: 
Las Cruces City Manager

ATTEST:

By: 
Las Cruces City Clerk

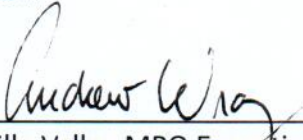
APPROVED AS TO FORM:

By: 
Las Cruces City Attorney

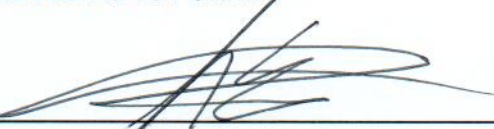
MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION

By: 
Chair of the Mesilla Valley MPO

ATTEST:

By: 
Mesilla Valley MPO Executive Secretary

APPROVED AS TO FORM:

By: 
Mesilla Valley MPO Attorney