

ITEM # 15-0218
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**SANTA FE METROPOLITAN PLANNING ORGANIZATION
REVISED AND RESTATED JOINT POWERS AGREEMENT**

THIS REVISED AND RESTATED METROPOLITAN PLANNING ORGANIZATION JOINT POWERS AGREEMENT (the "Agreement") by and between the City of Santa Fe, New Mexico, a municipal corporation (the "City"), the County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico (the "County"), and Tesuque Pueblo, a sovereign nation, is entered into as of this 10th day of April, 2015, for the purpose of continuing the Santa Fe Metropolitan Planning Organization (the "MPO") originally established by and between the City and County through a Joint Powers Agreement, dated June 30, 1982.

RECITALS

WHEREAS:

- A. In accordance with the Joint Powers Agreements Act, NMSA 1978, §§ 11-1-1 through 11-1-7 (the "JPA Act"), the City, the County, and the Tesuque Pueblo are public agencies and are authorized by law to enter into this Agreement;
- B. The purpose of the MPO is to provide joint and coordinated transportation planning throughout the MPO Metropolitan Planning Area ("MPA") in accordance with all federal, State and local laws;
- C. The parties hereto recognize that the MPO should be a separate body established to conduct transportation planning in cooperation with the New Mexico Department of Transportation ("NMDOT"); and
- D. NMDOT recognizes the MPO and the need to periodically update joint powers agreements between participating local governments.

AGREEMENT

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THEY SHALL CONTINUE THE METROPOLITAN PLANNING ORGANIZATION ACCORDING TO THE FOLLOWING TERMS:

I. SCOPE OF AGREEMENT.

A. Authority. It is the intention of the parties that under the terms of this Agreement the MPO shall continue to function pursuant to the authority granted by federal law and regulations (49 U.S.C. § 5303; 23 C.F.R. §§ 450.100 through 450.338). The MPO is hereby granted the authority to perform all acts necessary to fulfill the purposes of this Agreement.

B. Purposes. The MPO shall serve as a forum for cooperative decision-making in transportation-related matters between the parties hereto as well as among other federal and state agencies by receiving and considering citizen input. The MPO shall also serve to assist other governmental agencies and the public by supplying transportation-related information and data gathered by the MPO staff.

C. Required Work Products. MPO work activities and products are listed in the NMDOT Planning Procedures Manual and shall be conducted in accordance with the most current federal act authorizing transportation funding. The following work products are required by federal law and regulation (23 USC § 104 and § 134; 23 CFR Part 450) and defined in the MPO Planning Process:

1. Develop and update every five years the Metropolitan Transportation Plan (“MTP”), the long-range transportation plan for the MPA over the next twenty-five years;
2. Develop and update every four years a Public Participation Plan (“PPP”) and

Title VI Plan in order to outline the process of public involvement in plans and studies related to the MTP;

3. Develop and periodically update the Transportation Improvement Program (“TIP”), which lists projects and programs with identified funding for the purpose of implementing the MTP;

4. Develop an annual List of Obligated Projects;

5. 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;

6. Following the conclusion of each decennial census, update the MPO MPA map with a smoothed urbanized area boundary map and roadway functional classification map; and

7. Develop Transportation System Performance Measures, Targets, and evaluation criteria that address 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.

D. Organization. The MPO is organized with a Transportation Policy Board (“TPB”), a Technical Coordinating Committee (“TCC”), and MPO staff.

1. The TPB is the recognized governing authority for the MPO and is governed by its bylaws. It consists of representatives from the City, the County, Tesuque Pueblo, and the NMDOT.

2 The TPB shall establish policies and plans that govern the Metropolitan Transportation Planning process.

3. The TPB shall establish the TCC, comprised of staff of the parties hereto and other agency staff involved in transportation planning, to provide technical review and project recommendations to the TPB.

4. The City, in consultation with the TPB, shall hire and retain MPO staff and shall, at a minimum, hire and retain an MPO Officer for the purpose of daily administration of MPO activities.

5. The number of MPO staff and the physical location of MPO staff offices shall be determined jointly by the TPB and the City, as fiscal agent of the MPO.

6. 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.

7. The MPO Officer shall manage the budget and expenditures of the MPO planning funds as appropriated by the federal government and distributed by NMDOT.

8. The MPO Officer shall be responsible for the development and update of the MTP, the PPP, the Title VI Plan, the TIP, the List of Obligated Projects, the Annual Performance and Expenditure Report, the Quarterly Reports with Invoices, and the UPWP with Budget, for review by the TCC and approval by TPB.

E. **Planning Data.** To the maximum extent possible, the parties hereto agree to utilize common base data, statistics and projections for the planning area and to exchange pertinent planning data collected by any party.

F. **Metropolitan Planning Area.** The MPO MPA, determined in accordance

with 23 CFR 450.312, within which transportation planning shall be conducted includes the City and, at a minimum, those lands anticipated to urbanize over at least a twenty-year period, as shown on the MPO MPA map and attached to this Agreement, as such may be updated by the TPB from time to time.

G. **Budget and Cost Allocation.** 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 NMDOT in accordance with an established allocation formula, and under the terms of the applicable agreement with NMDOT.

1. The parties are responsible to provide required local government matching funds and additional operating funds needed for the MPO. Any party may voluntarily contribute cash or in-kind services towards MPO operations expense. Contingent upon appropriations being made by the City and County pursuant to Section IV(B) of this Agreement and beginning with federal fiscal year 2016, the cash match requirement and additional operating funds for the MPO shall be allocated between the parties as follows: Seventy per cent (70 %) from the City and thirty per cent (30%) from the County, which is based on the ratio of population within the MPA. At the County’s option, the County’s share of the required cash match and additional operating funds may be advanced to the City, as fiscal agent for the MPO, at the beginning of the federal fiscal year or be paid on a mutually agreeable periodic basis pursuant to invoices from the City based upon actual expenditures of the MPO. The parties hereto shall review on an annual basis the financial contribution of each party in providing the required local government matching funds and additional operating funds for the MPO.

2. The City shall act as fiscal agent for the MPO.

H. **Conflict Resolution.** The parties agree to work in good faith to resolve any conflicts that concern this Agreement or arise out of this Agreement in a timely and conciliatory manner. The TPB Chair shall be responsible in the first instance for resolving disputes arising out of this Agreement. If the TPB Chair cannot satisfactorily resolve a dispute, then any party may petition the MPO to attempt to resolve the dispute using guidance in the NMDOT Planning Procedures Manual. In the event these steps do not resolve the dispute, then the parties agree to a mediation process administered by the FHWA or FTA. Disputes shall be first discussed by representatives of each party having the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty days of the occurrence of the event or circumstances giving rise to the dispute, a final determination shall be made through binding arbitration or other alternative dispute mechanism mutually agreeable to the parties.

II. TERM.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE SECRETARY OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION (“DFA”). This Agreement shall continue in effect until such time as it may be terminated by either the City or the County pursuant to paragraph III below.

III. TERMINATION AND WITHDRAWAL.

A. This Agreement may be terminated by either the City or the County upon written notice delivered to all parties at least 120 days prior to the intended date of termination. Such termination shall not nullify obligations incurred for performance or failure to perform prior to the date of termination.

B. Tesuque Pueblo may withdraw from this Agreement at any time by giving the other parties 120 days advance written notice. Such withdrawal shall not nullify obligations incurred for performance or failure to perform prior to the date of termination.

IV. PROCUREMENT AND APPROPRIATIONS.

A. **Procurement.** All procurements shall be made in accordance with the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199.

B. **Bateman Act Compliance.** The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made or given by the City and County to perform under this Agreement. If sufficient appropriations and authorizations are not made or given by the City or County, this Agreement may be terminated or this Agreement may be amended in accordance with paragraph VII below. A party's decision as to whether sufficient appropriations are available shall be accepted by the other parties and shall be final.

V. LIABILITY.

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 Agreement. Nothing herein is intended to nor shall be deemed to waive the rights of the parties hereto to claim the privileges and immunities granted to them under NMSA 1978, § 11-1-6 or under the Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, or any other applicable law or ordinance. Nothing herein shall be deemed or interpreted as a waiver of the sovereign immunity of the Tesuque Pueblo.

VI. AMENDMENT.

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and approved by DFA. Justifications for amendments may include, but shall not be limited to, the following:

A. The passage of new federal transportation legislation that includes new or revised requirements for metropolitan planning; or

B. A significant change in membership and structure of the MPO resulting from an entity withdrawing from the MPO; additions or reductions of membership to the MPO committees; significant changes based on census data, including formation of a new member agency within the MPO jurisdiction; or significant modifications to the MPO MPA.

VII. NOTICES.

Any notice required by this Agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

CITY: Attn: City Manager
City of Santa Fe
200 Lincoln Ave.
P.O. Box 909
Santa Fe, New Mexico 87504-0909

COUNTY: Attn: County Manager
Santa Fe County
120 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-0276

TESUQUE PUEBLO: Attn: Office of the Governor
Tesuque Pueblo
Route 42 Box 360-T
Santa Fe, NM 87506

VIII. GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of New Mexico.

Nothing herein shall be deemed or interpreted as a waiver of the sovereign immunity of the Tesuque

Pueblo.

IX. STATUS OF AGREEMENT; JPA ACT.

The parties acknowledge and agree that this Agreement constitutes an "agreement" as that term is used in the JPA Act.

X. ACCOUNTABILITY.

The City of Santa Fe shall maintain accurate and complete records of all MPO activities and, upon receipt of a reasonable written request, shall make such records available to the other parties and to the public, including any federal, state or local authority, during regular business hours.

XI. DISTRIBUTION OF RESIDUAL PROPERTY AND SURPLUS FUNDS.

A. Upon termination of this Agreement the parties will distribute and dispose of all property acquired in connection with this Agreement. If any property is acquired in connection with this Agreement the division or distribution of which is not specifically provided for in this Agreement, then such property shall be distributed to the party that acquired it; or if the property was acquired by more than one party, the property shall be distributed to each party in accordance with that party's pro rata share of acquisition and maintenance costs, if any, unless otherwise agreed by the parties.

B. Upon termination of this Agreement, any surplus money on hand shall be returned to the parties in proportion to the contributions made by the parties.

XII. PUBLIC RECORDS.

The parties intend that this Agreement be considered a "public record" for purposes of the Inspection of Public Records Act, NMSA 1978, §§14-2-1 through 14-2-12.

XIII. CONFORMITY WITH JPA ACT.

The parties intend that this Agreement conform in all respects with the JPA Act, and that this Agreement shall be construed and enforced in conformity with the JPA Act. In case of any inconsistency between this Agreement and the JPA Act, the provisions of the JPA Act shall control and this Agreement shall be deemed amended so that such controlling provisions of the JPA Act are incorporated into and made part of this Agreement, and any inconsistent provisions of this Agreement are deleted as and to the extent of the inconsistency.

XIV. EFFECT ON 2009 JOINT POWERS AGREEMENT.

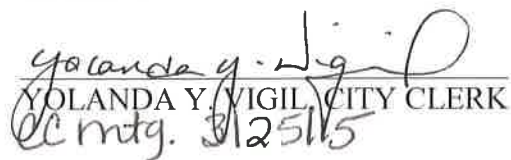
This Agreement replaces in its entirety the parties' 2009 Joint Powers Agreement, which shall be of no further force or effect once this Agreement is approved by DFA.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SANTA FE:


JAVIER GONZALES, MAYOR

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
CC mtg. 12/5/15

APPROVED AS TO FORM:


KELLEY BRENNAN, CITY ATTORNEY

APPROVED:


OSCAR S. RODRIGUEZ, FINANCE
DIRECTOR

SANTA FE COUNTY:


ROBERT A. ANAYA, CHAIR
BOARD OF COUNTY COMMISSIONERS

ATTEST:

GERALDINE SALAZAR, COUNTY CLERK

APPROVED AS TO FORM:


GREGORY S. SHAFER, COUNTY ATTORNEY

2-24-2015



TESUQUE PUEBLO:


MILTON P. HERRERA, GOVERNOR

ATTEST:

EARL SAMUEL, LT. GOVERNOR

THIS AGREEMENT HAS BEEN APPROVED BY:

State of New Mexico
Department of Finance Administration



By: Thomas Clifford
(Print Name)

Date: April 10, 2015

Attachment: Santa Fe MPO Metropolitan Planning Area

ATTACHMENT TO SANTA FE METROPOLITAN PLANNING ORGANIZATION
REVISED AND RESTATED JOINT POWERS AGREEMENT

