

**El Paso
Metropolitan Planning Organization**

TRANSPORTATION POLICY BOARD AGENDA ITEM SUMMARY

July 19, 2024

AGENDA ITEM NO. 3:

Discussion and action to consider authorizing the Executive Director to execute the following agreements associated with the International Border Crossings Strategic Plan:

- a. Advance Funding Agreement with TxDOT
- b. DRAFT non-federal match agreement with City of El Paso
- c. DRAFT non-federal match agreement with New Mexico Economic Development Department
- d. DRAFT non-federal match agreement with El Paso County

RECOMMENDED MOTION:

Authorize the Executive Director to execute the agreements.

SUPPORT INFORMATION:

- DRAFT Advance Funding Agreement with TxDOT
- DRAFT Non-federal match agreement with COEP
- DRAFT Non-federal match agreement with NMEDD
- DRAFT Non-federal match agreement with EP County

DISCUSSION/OPTIONS:

Funding for the IBC Strategic Plan was approved by the TPB in March 2023 in the amount of \$2 million from Category STP funds, which provides a federal share of 80% and a non-federal share of 20%. In order for the EPMPO to have access to the funds, an Advanced Funding Agreement (AFA) is needed with the TxDOT. Attachment B *Project Budget Estimate* of the AFA shows how the breakdown of the funding. The last column titled "Local Participation Cost", shows the 20% non-federal match of the federal grant plus 20% TxDOT's direct costs totaling \$403,000.00. This amount is proposed to be covered in equal parts by The City of El Paso, El Paso County and the New Mexico Economic Development Department. The attached drafts were sent to each entity for review. Based on initial communication with staff of the three entities, it is anticipated that the final version of the agreements will not have substantive changes in the key terms, roles and responsibilities.

TxDOT:				Federal Highway Administration:	
CCSJ #	0924-06-738	AFA ID	Z00009406	CFDA No.	20.205
AFA CSJs	0924-06-738			CFDA Title	Highway Planning and Construction
District #	24	Code Chart 64#	60797		
Project Name	Int'l Border Crossing System-Wide Analysis			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**NON-CONSTRUCTION
ADVANCE FUNDING AGREEMENT
For A
Surface Transportation Program (STP)**

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation**, called the “State”, and the **EI Paso Metropolitan Planning Organization**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

BACKGROUND

Federal law establishes federally funded programs for transportation improvements to implement its public purposes, including the Surface Transportation program.

Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and Federal funds.

The Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects.

The Texas Transportation Commission passed Minute Order Number **116292**, which provides for development of and funding for the project identified in this agreement.

The Governing Body of the Local Government has approved entering into this agreement by resolution, ordinance, or commissioners court order dated **{Enter Date of Resolution}**, which is attached to and made a part of this Agreement as Attachment C, Resolution, Ordinance, or Commissioners Court Order (Attachment C).

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the close of ordinary business on October 31, 2027.

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2. Scope of Work

The scope of work is the project (Project) as detailed in Attachment A, Scope of Work (Attachment A), which is attached to and made part of this agreement.

3. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment B, Project Budget Estimate (Attachment B), which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.
- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment B. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. The State will be responsible for securing the federal and State share of the funding required for the Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- D. The Local Government will be responsible for all non-federal and non-State participation costs associated with the Project. If the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.

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- E. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding and the periodic payment schedule, when periodic payments have been approved by the State.
- F. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, Attachment B reflects those adjustments.
- G. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- H. The State will not pay interest on any funds provided by the Local Government.
- I. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- J. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- K. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- L. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

4. Termination of This Agreement

This Agreement may be terminated:

- A. By written mutual consent of the parties;
- B. By one party because of a material breach by the other party, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. By the State if the Local Government elects not to provide its share of funding, in which case the Local Government shall pay for the State's reasonable actual costs during the Project;

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- D. By the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. If the Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

5. Amendments

Amendments to this Agreement shall be in writing and shall be executed by both of the parties.

6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

7. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
El Paso Metropolitan Planning Organization ATTN: Executive Director 211 N.. Florence Suite 202 El Paso, Texas 79901	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

8. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

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9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its employees, representatives, and agents.

10. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government.

11. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

12. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

13. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

14. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. When required by state or federal statute or regulation, the State must pre-approve the Local Government's procurement procedures for purchases to be eligible for reimbursement with state or federal funds.

15. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement

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or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

16. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations

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and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

17. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).

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- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

18. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the

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matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

19. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

20. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants,

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loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

21. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five executives to the State if:
 - i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

22. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if

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applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.

- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

23. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

Typed or Printed Title

Date

Signature

Typed or Printed Name

Executive Director

Typed or Printed Title

Date

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Attachment D

Information Resources and Security Requirements International Border Crossing System-Wide Analysis

The El Paso Metropolitan Planning Organization (MPO) is the Performing Agency for this contract and as such the term “Contractor” within Appendix A below shall refer to MPO.

1. TYPES OF DATA

“**TxDOT Data**” means TxDOT information, data, records, and information to which a Contractor-Related Entity has access, has possession, or is otherwise provided to the a Contractor-Related Entity by TxDOT, whether or not intended under or for the purposes of the agreement, including, without limitation, data generated or collected under this agreement, intellectual property created as a work for hire under this agreement, and Personal Identifying Information (as defined below).

TxDOT Data is classified into the four categories that control applicability of security standards: Public, Sensitive, Confidential, and Regulated. See Section 4 for Definitions.

Any data that a Contractor-Related Entity accesses and downloads from a TxDOT system, for use, manipulation, storage, or management is considered Confidential Data unless otherwise specified in writing by TxDOT.

2. DATA REQUIREMENTS

2.1 Data, Data Dictionaries, and Data Flow Diagrams

Contractor shall ensure that all TxDOT Data that is generated, manipulated, transmitted, or stored, utilizes the TxDOT taxonomy, with documented data dictionaries, and data flow diagrams (including security protocols).

2.2 Data Transfer

- (a) At the completion of a deliverable, the Contractor shall transfer all TxDOT Data generated and stored for that deliverable to TxDOT in a manner and format acceptable to TxDOT and approved by TxDOT’s Information Technology Division (“**ITD**”).
- (b) All metadata associated with the TxDOT Data transferred must remain attached to that data.
- (c) Contractor shall maintain the appropriate level of data security throughout the transfer of the TxDOT Data.

2.3 Backup and Disaster Recovery

- (a) Contractor shall implement business continuity procedures to fulfill all requirements of this agreement that address, as a minimum, fire, theft,

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natural disaster, technical difficulty, workforce problems equipment failure, or other disruption of business.

- (b) Contractor shall maintain a disaster recovery plan. Contractor is responsible for all project related costs of disaster recovery during the project except for costs associated with disasters beyond Contractor's reasonable control, and for those costs included as part of the TxDOT infrastructure responsibilities.

2.4 Open Records Requests

Contractor shall not release Information in response to an open record request related to this agreement request unless TxDOT has approved the release in writing.

2.5 Encryption

For Sensitive, Confidential, and Regulated TxDOT Data, the Contractor shall ensure TxDOT Data is encrypted while in-transit and while at-rest in accordance with the TxDOT Controls Catalog Standard SC- 13, Cryptographic Protection and SC-08, Transmission Confidentiality and Integrity security requirements.

2.6 Accessibility

Contractor shall ensure all products provided under this agreement comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code (TAC) Chapters 206 and 213.

3. INFORMATION RESOURCE AND SECURITY REQUIREMENTS

3.1 Information Security Safeguards

- (a) Contractor shall implement appropriate administrative, physical, and technical safeguards, in accordance with TxDOT's security requirements, that reasonably and appropriately protects the confidentiality, integrity, and availability of TxDOT Data.
- (b) Contractor shall conform its policies and procedures relating to the implementation of security safeguards to comply with TxDOT's Information Resources security program pursuant to the TxDOT and DIR's Information Security Controls Catalog Standards.

3.2 Potential Cybersecurity Incident or Breach Notification

Contractor shall immediately report to TxDOT via the Report Cybersecurity Incident Page on TxDOT.gov, any potential cybersecurity incident or breach involving TxDOT Data (See Section 4, Definitions).

3.3 Demonstrating Compliance with Information Security Requirements

If required by TxDOT, prior to contract award, at renewal, and on a recurring basis, Contractor shall provide a TxDOT Security Questionnaire as documented in the contract. Additionally, upon reasonable notice to the Contractor, and if TxDOT determines that the Contractor has violated this agreement, TxDOT, directly or through its agent, may request an attestation, which may include

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additional attestations, and evidence that Contractor is in compliance with applicable laws, regulations, and standards outlined in 3.5.

3.4 Security Training

In accordance with Section 2054.5192 of the Texas Government Code, each Contractor-Related Entity that will access a TxDOT computer system or database must complete a TxDOT approved cybersecurity training program that is certified under Section 2054.5192 of the Texas Government Code. The training program must be completed during the term of the contract and during any renewal period. The Contractor shall provide verification of completion of the cybersecurity training program in a method designated by TxDOT.

3.5 Applicable Laws, Regulations, and Standards

Contractor shall perform the services in accordance with the following standards, notify TxDOT of situations where compliance is not achievable, and assist TxDOT with the prevention of security gaps or conflicts that could impair security performance. Contractor shall comply with all applicable federal, state, and local laws and regulations necessary to perform the services. A non-exhaustive list of federal, state, and local laws and regulations that might be applicable includes the following.

- (1) DIR Security Controls Standard Catalog and applicable TxDOT Security Requirements
 - (A) For Public Data, TxDOT and DIR Security Controls Standards Catalog low baseline and applicable TxDOT security requirements.
 - (B) For Sensitive Data TxDOT and DIR Security Controls Standards Catalog low baseline with Sensitive overlay and applicable TxDOT security requirements.
 - (C) For Confidential Data, TxDOT and DIR Security Controls Standards Catalog moderate baseline and applicable TxDOT security requirements.
 - (D) For Regulated Data, TxDOT and DIR Security Controls Standards Catalog moderate

baseline, applicable TxDOT security requirements, and applicable regulated security requirements.

- (2) TX-RAMP Requirements
 - (A) Contractor shall ensure that any Contractor-Related Entities providing a Cloud Computing Service to TxDOT that creates, accesses, transmits, uses, or stores TxDOT Data must be authorized in the Texas Risk and Authorization Management Program (“**TX-RAMP**”) if TxDOT determines TX-RAMP is required.
 - (B) TxDOT may approve the use of a TX-RAMP provisional status in lieu of a TX-RAMP certification. This approval is

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not effective unless approved in writing by the TxDOT Chief Information Security Officer (“**CISO**”) and DIR.

- (C) Applicable Contractor-Related Entities must achieve the following levels of authorization by the following dates for any new contract or renewal of existing contract:
 - a. TX-RAMP Level 1 Status no later than January 1, 2024
 - b. TX-RAMP Level 2 Status no later than January 1, 2022
- (3) State Laws and Regulations:
 - (A) Texas Administrative Code, Chapter 202 – Information Security Standards
 - (B) Texas Administrative Code, Chapter 206 – State Websites
 - (C) Texas Administrative Code, Chapter 213 – Electronic and Information Resources
 - (D) Texas Government Code, Chapter 552 – Public Information
 - (E) Texas Government Code, Chapter 2054 – Information Resources
 - (F) Texas Penal Code, Chapter 33 – Computer Crimes
 - (G) For Confidential data, Texas Business and Commerce Code, Chapter 521 –

Unauthorized Use of Identifying Information

- (H) For Confidential data containing Protected Health Information, Texas Health and Safety Code, Chapter 181 – Medical Records Privacy
- (I) For Regulated data containing Payment Card Industry (“**PCI**”) information, the Payment Card Industry Data Security Standards (“**PCI-DSS**”)
- (J) For Regulated data containing Criminal Justice Information (“**CJI**”), the Criminal Justice Information Services (“**CJIS**”) Security Policy

3.6 Information Resources Technology

- (a) Any proposed information resources technology that will be installed on any TxDOT owned equipment or that will access any TxDOT network must be reviewed and approved by the ITD Architectural Review Board (“**ARB**”) prior to any development or design.
- (b) Any proposed information resources technology that will be installed on any TxDOT owned equipment or that will access any TxDOT network must be reviewed and approved by the ITD Change Advisory Board (“**CAB**”) prior to implementation or delivery.

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3.7 Information Resources Technology (“IRT”) Procurements ITD must approve all procurements of:

- (1) Information Resources Technology that will be owned by TxDOT.
- (2) IT services for any environment that provides processing, storage, networking, management and the distribution of data to ensure alignment with Texas Government

Code, Chapter 2054, Subchapter L.

3.8 Prohibited Technologies

In accordance with the Texas Statewide Plan for Prohibited Technologies, Contractor shall not provide services, equipment, or systems to TxDOT determined to be a Prohibited Technology by TxDOT. A list of the entities currently determined to be Prohibited Technologies is available at:

<https://ftp.txdot.gov/pub/txdot/itd/cybersecurity/prohibited-technologies-list-cybersecurity.pdf>

3.9 Background Checks Required for Access to TxDOT Data and TxDOT Systems

- (a) The contractor shall ensure that a Background Check is performed on each Contractor-Related Entity prior to that person receiving access to any TxDOT system.
- (b) Contractor shall ensure that a Background Check is performed on each Contractor-Related Entity prior to that person receiving access in a Contractor-Related Entity Environment to TxDOT Data that requires a Moderate or High Security Baseline
- (c) A “**Background Check**” must include the following:
 - (1) Verification of Social Security number;
 - (2) All true alias names and counties
 - (3) Federal and county level checks for felony and misdemeanor arrest and convictions for the past seven years, including sentences of deferred adjudication – all names;
 - (4) Search of national criminal database – all names;
 - (5) Search of state and national sex offender registry – all names; and
 - (6) Search of the government sanction registry listings.
- (d) Contractor shall not allow any Contractor-Related Entity for which Contractor received any unfavorable result when conducting a Background Check to access TxDOT Data or any TxDOT System.
- (e) TxDOT may make exceptions to 3.9(d) on a case-by-case basis. Any exception granted by TxDOT must be in writing to be effective.
- (f) Upon request by TxDOT, Contractor shall provide documentation that demonstrates to TxDOT’s satisfaction that Background Checks have been conducted as required and that no Contractor- Related Entity with one or more unfavorable results has received access to TxDOT Data or any TxDOT System.

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- (g) Contractor shall immediately notify TxDOT if it learns of any change in status that might cause a Contractor-Related Entity to receive an unfavorable result from a Background Check.
- (h) If Contractor fails to meet the requirements of 3,9, TxDOT may terminate this contract immediately with no further liability to the Contractor.

3.10 Interconnection of TxDOT and Contractor-Related Entity Environment
If a Contractor-Related Entity has or will have one or more interconnections between an Information System in that Contractor-Related Entity's Environment and a TxDOT System or Systems, the Contractor shall execute or cause to be executed an Interconnection Security Agreement (“ISA”) for each interconnection. An executed ISA must be provided to TxDOT for each new interconnection prior to connection.

3.11 Upon request by TxDOT, the Contractor shall provide any additional information or documentation that TxDOT determines is necessary to confirm a Contractor-Related Entity's compliance with this section. If Contractor fails to provide requested information as required, TxDOT may terminate this contract immediately with no further liability to the Contractor.

3.12 If completion of any of the requirements in this section requires obtaining information and/or action from a Contractor-Related Entity or other non-party entity, Contractor shall obtain the required information or action from that entity. For example, if the Contractor is a reseller of a Contractor-Related Entity's product or service, the Contractor is responsible for completing the TxDOT Security Questionnaire and the Contractor must obtain all the information or actions from the Contractor- Related Entity necessary for the Contractor to complete the questionnaire.

3.13. SOC 1 Type 2 and SOC 2 Type 2 Requirements

If a Contractor-Related Entity is determined to be providing a function that is a key internal financial control or has a material financial impact on the TxDOT financial statements, then the following are applicable:

- a) Provide an Annual Report – Contract-Related entity must provide TxDOT the audit SSAE 18 Results within 15 days of Contract-Related receipt of final report from independent auditor. Licensor will engage a third party (the “Service Provider”) to conduct an examination in accordance with Statement on Standards for Attestation Engagements No. 18, as established by the American Institute of Certified Public Accountants (AICPA), and commonly referred to as a Service

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Organization Controls (SOC) 1, relevant to controls related to the solution, and prepare a SOC 1 Type 2 report with respect thereto (the "SOC 1 Report").

- b) In addition, Licensor will engage a Service Provider to conduct an examination in accordance with AT Section 101 of the Statement on Standards for Attestation Engagements to report on controls at a Service Organization relevant to security and availability, established by the AICPA ("AICPA Standards") and, subject to AICPA Standards, prepare a Type 2 service organization controls report with respect thereto (the "SOC 2 Report"). Once the SOC 1 Report and SOC 2 Report are each available, upon written request from Licensee, Licensor must make available Licensor personnel to discuss with TxDOT the reports. Other report types will not be considered to meet these requirements.

4. DEFINED TERMS

- 4.1 **"baseline"** means the set of minimum-security controls defined for a low-impact, moderate-impact, or high-impact information system. Information on applicable baselines is available at <https://www.txdot.gov/inside-txdot/division/information-technology/Cybersecurity/cybersecurity-resources.html>.
- 4.2 **"Breach"** means "breach of system security" as defined in Section 521.053(a) of the Texas Business and Commerce Code, which defines breach of system security as "the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data."
- 4.3 **"Cloud Computing Service"** means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. Cloud computing is referenced in Texas Government Code Title 10, Subtitle D, Chapter 2157, Subchapter A, Section 2157.007 and is defined in NIST 800-145.
- 4.4 **"Confidential Information"** has the meaning provided in 1 Texas Administrative Code § 202.1(5), which states the confidential information means "information that must be protected from unauthorized disclosure or public release based on published laws or legal agreements." Information that is Confidential Information under this definition includes:

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- (a) Dates of birth of living persons
 - (b) Driver's license numbers
 - (c) License plate numbers
 - (d) Credit card numbers
 - (e) Insurance policy numbers
 - (f) Attorney-Client communications
 - (g) Drafts of policymaking documents
 - (h) Information related to pending litigation
 - (i) Audit working papers
 - (j) Competitive bidding information before contract awarded.
 - (k) Personal Identifiable Information
 - (l) Sensitive Personal Information
 - (m) Regulated data
 - (n) Information excepted from disclosure requirements of Chapter 552 of the Texas Government Code ("**Texas Public Information Act**") or other applicable state or federal law
 - (o) Compliance reports for which the Texas Attorney General has granted permission to withhold
 - (p) Investigative working papers and draft reports excepted from disclosure under Section 552.116 of the Texas Government Code
- 4.5 "**Contractor-Related Entity**" means Contractor; subcontractors; their employees, agents and officers; and all other persons for whom Contractor might be legally or contractually responsible.
- 4.6 "**Contractor-Related Entity Environment**" means an Environment for which TxDOT does not manage or control the system environment, servers, operating systems, or storage with the exception of user- specific configuration settings.
- 4.7 "**Data**" means the representation of facts; as the raw material of information that is used as a basis for reasoning, decision-making, discussion, or calculation.
- 4.8 "**Data Dictionary**" means a directory of the definitions, purpose, policies and structure about data. It is a compilation of information about the data owned by the enterprise. It describes every data item in a database in enough detail for users and application developers to know what the data is and how to make use of it.
- 4.9 "**Environment**" means an aggregate of procedures, conditions, and objects affecting the development, operation, and maintenance of an information system.
- 4.10 "**Information**" means data, regardless of form, that is created, contained in, or processed by information resources facilities, communications networks, or storage media.

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- 4.11 **“Information Resources Technology”** means data processing and telecommunications hardware, software, services, supplies personnel, facility resources, maintenance and training that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information.
- 4.12 **“Information System”** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. An Information System normally includes, but is not limited to, hardware, software, network infrastructure, information, applications, communications, and people.
- 4.13 **“Personal Identifying Information”** means information that alone or in conjunction with other information identifies an individual, including an individual's:
- (a) Name, social security number, date of birth, or government-issued identification number;
 - (b) Mother's maiden name;
 - (c) Unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; and
 - (d) Unique electronic identification number, address, or routing code.
- 4.14 **“Potential Cybersecurity Incident”** means an event which may result in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of information or information resources.
- 4.15 **“Public Data”** means Data that is subject to public disclosure pursuant to the Texas Public Information Act and freely and without reservation made available to the public.
- 4.16 **“Public information”** means information written, produced, collected, assembled, or maintained by or for a governmental body, including information held by individual officers or employees of a governmental body, in connection with the transaction of official TxDOT business. This includes information that is held by contractors and consultants and that TxDOT owns, to which TxDOT has a right of access, or on which public money was spent for the purpose of writing, producing, collecting, assembling, or maintaining the information. Public information includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business. Public information may be stored in any medium and may exist in forms such as books, papers, letters, documents, e-mails, Internet postings, text messages, instant messages, printouts, photographs, maps, drawings, and audio and video recordings.

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Public information does not include tangible items, such as computers or guardrails.

- 4.17 **“Regulated Data”** means information for which the use and protection of is dictated by a state or federal agency or by third party agreements.
- 4.18 **“Sensitive Data”** means information that could be subject to release under an open records request, but should be controlled to protect third parties, and should be vetted and verified before release. At TxDOT, this could include operational information, personnel records, research, or internal communications.
- 4.19 **“Sensitive Personal Information”** has the meaning provided by Section 521.002(2) of the Texas Government Code, which defines sensitive personal information as:
- (a) An individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and item are not encrypted:
 - (1) Social Security Number
 - (2) Driver’s license number or government-issued identification number; or
 - (3) Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; or
 - (b) Information that identifies an individual and relates to:
 - (1) The physical or mental health or condition of the individual;
 - (2) The provision of health care to the individual; or
 - (3) Payment for the provision of health care to the individual.
- 4.20 **“TxDOT Security Questionnaire”** means a cybersecurity and privacy questionnaire that provides TxDOT ITD necessary information for third party attestation in accordance with TxDOT requirements.
- 4.21 **“TxDOT System”** means an Information System that is owned, managed, or maintained by TxDOT or on behalf of TxDOT.

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**ATTACHMENT A
SCOPE OF WORK**

Local Government shall perform its work in accordance with the attached, Information Resources and Security Requirements. A Contractor-Related Entity might create, access, transmit, store, or use Sensitive TxDOT data in a Contractor-Related Entity Environment. Contractor shall ensure that Contractor-Related Entity Environments comply with the TxDOT Low Security Baseline with the Sensitive, Privacy Overlay.

Project Goal:

The Local Government will develop a plan that will make recommendations on improvements to the system in an effort to create a Regional International Border Crossing System that is more efficient and better suited to meet the needs of the growing Borderplex region.

Scope of Work:

The Local Government will develop an International Border Crossing (IBC) Strategic Plan that includes three states in two countries that will analyze current conditions and operations of the six international IBCs within the El Paso MPO planning area.

The IBC Strategic Plan will be developed in coordination and participation from stakeholders, the public, and private sectors in Mexico and the United States. The evaluation of the recommended improvements will include an air quality element, which reduces the delays in the cross-border movement of people, vehicles, and goods. To accomplish this, the MPO will utilize new state of the art analytic tools, to include the Border Emissions Estimator for Microsimulation (BEEM), and the International Travel Demand Model (iTDM)

The Strategic Plan will also identify specific improvements to the existing infrastructure and develop these improvements with ample information to carry them out as specific projects.

The Local Government will research the feasibility of establishing a 3-State, bi-national port authority that could serve as the planning and operating entity for all the IBCs in the El Paso MPO region to allow the IBCs to function as a system.

The Local Government will comply with the information technology requirements set forth in Appendix A, Information Resources and Security Requirements (Appendix A) which is attached.

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Tasks: The Local Government shall:

1. Data Collection from past and present plans, studies, and reports
2. Stakeholder Outreach and public engagement.
3. Current Conditions Analysis -2024 IBC system
4. Develop and Evaluate Future Scenarios of the Regional IBC System.
5. Identify Specific Infrastructure Improvements to Individual IBCs
6. Identification of local and binational Economic Development Opportunities
7. Research the feasibility of a 3-State, Binational Port Authority

Deliverables: Target AFA Execution Date August 1, 2024

Submit Monthly status reports no later than the 15th of every month, supporting milestones completed as study progresses. Final reports will be submitted at the completion of each task and contain associated data and documentation pertaining to the task completed. Status reports will be submitted electronically at ELP-Contracts@txdot.gov. The LG shall submit monthly invoices, to the state, electronically at ELP-Contracts@txdot.gov.

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**ATTACHMENT B
PROJECT BUDGET ESTIMATE**

Costs will be allocated based on applicable Federal/Local funding, until maximum federal funding is reached. The Local Government will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation	State Participation	Local Participation
		Cost	Cost	Cost
Surface Transportation Program (by Local Government)	\$2,000,000.00	\$1,600,000.00	\$0	\$400,000.00
Direct State Costs	\$15,000.00	\$12,000.00	\$0	\$3,000.00
Indirect State Costs	\$92,000.00	\$0	\$92,000.00	\$0
TOTAL	\$2,107,000.00	\$1,612,000.00	\$92,000.00	\$403,000.00

Payment by the Local Government to the State: \$3,000
The final amount of Local Government participation will be based on actual costs.

EL PASO COUNTY) INTERLOCAL AGREEMENT
) International Border Crossing System-Wide Analysis
STATE OF TEXAS)

This Interlocal Agreement (“Agreement”) is made and entered into by and between the El Paso Metropolitan Planning Organization (the “EPMPO”), a political subdivision of the State of Texas, and the City of El Paso, Texas (the “City”), a political subdivision of the State of Texas, and collectively referred to as the “Parties,” or each individually referred to as a “Party.”

RECITALS:

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, the EPMPO is the metropolitan planning organization for El Paso County, Texas, southern Doña Ana County, New Mexico, and a portion of Otero County, New Mexico; and

WHEREAS, on January 20, 2023, the EPMPO Transportation Policy Board (the “TPB”) unanimously approved amending the RMS 2050 MTP and RMS 2023-2026 TIP to program the International Border Crossings System-wide Improvements Analysis using \$2,000,000.00 of CAT 7 STP MM funds (the “Plan”); and

WHEREAS, the Federal Highway Administration has approved a total estimated cost of \$2,107,000.00 for the completion of the Plan with the following cost allocation (1) **Federal Participation Costs** - \$1,612,000.00, (2) **State Participation Costs** - \$92,000.00, and (3) **Local Participation Costs** - \$403,000.00; and

WHEREAS, the Plan will provide recommendations on improvements to the international border crossing system in an effort to create a more efficient system that is better suited to meet the needs of the El Paso region; and

WHEREAS, the Texas Department of Transportation (“TxDOT”) has authorized an Advance Funding Agreement between TxDOT and EPMPO to provide funding for the completion of the Plan as reflected in **Attachment A** (the Scope of Work) and **Attachment B** (the Budget Estimate), and which requires that EPMPO secure funding for the Local Participation Costs of \$403,000.00; and

WHEREAS, the City agrees to contribute an amount not to exceed \$150,000.00 towards the Local Participation Costs of \$403,000.00 for work completed by EPMPO towards completion of the Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises, covenants, and other good and valuable consideration exchanged between the Parties, the Parties hereby agree as follows:

1. RECITALS; ATTACHMENTS. The Recitals set forth above are incorporated herein for all purposes and are found by the Parties to be true and correct. The Attachments A and B are true and correct and are hereby expressly incorporated herein by reference as if set forth fully below.

2. RESPONSIBILITIES OF THE EPMPO.

- a. The EPMPO shall submit quarterly invoices to the City in a form and style agreed upon by the Parties to access the local match funds, and will apply those funds towards the payment of invoices for services provided in furtherance of performing and completing the Plan.
- b. Perform the work described in the Scope of Services, Attachment A to this Agreement.
- c. Perform the work in accordance with the Project Budget Estimate, Attachment B to this Agreement.
- d. Submit status reports supporting milestones completed as completion of the Plan progresses.
- e. Upon receiving reasonable requests, the EPMPO shall (1) furnish, at such times and in such form as may be requested, periodic information concerning the status of the Plan and the performance of the obligations under this Agreement, and (2) if feasible, authorize the inspection of work done and materials created for the Plan, at reasonable times and places. If the City believes the Project is not being developed as originally contemplated, the City's designated representatives shall meet with the EPMPO to discuss appropriate actions to ensure any defects in the Plan or deviations are remedied.
- f. Provide an electronic copy of the final approved Plan to the City.

3. RESPONSIBILITIES OF THE CITY.

- a. The City shall review all properly submitted invoices from the EPMPO and provide payment within a reasonable period to the EPMPO based on said invoices.
- b. In no event shall the amount that the City pays to the EPMPO exceed \$150,000.00.
- c. Funds provided by the City under this Agreement shall be used only for the work performed pursuant to Scope of Services, Attachment A to this Agreement.

4. TERM. The term of this Agreement will begin upon the execution of this Agreement by both Parties (the "Effective Date") and will remain in effect until the completion of the Project on or before May 31, 2026. This Agreement shall automatically terminate on May

31, 2026, unless the Parties renew or extend it via a separate written instrument mutually agreed upon by the Parties.

5. TERMINATION.

- a.** Termination for Convenience. Either Party may terminate this Agreement without cause after 30 days written notice to the other Party of the intention to terminate this Agreement. The Party providing services under this Agreement will halt all work on behalf of the other Party when the termination notice sent by the terminating Party is received by the non-terminating Party.
- b.** Termination for Cause. Either Party may terminate this Agreement if one Party fails to fulfill the obligations set out in this Agreement. Before terminating the Agreement pursuant to this provision, the terminating Party will provide written notice of intent to terminate enumerating the failures for which the termination is being sought and provide at least 30 calendar days to the non-terminating Party to cure the failure.

6. NO INDEMNIFICATION. The Parties agree that neither Party will have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages arising from this Agreement. Each Party must handle any claims resulting from their actions in this Agreement. Each Party agrees that each will be responsible for the acts or omissions of its respective representatives.

7. COMPLIANCE WITH LAWS. The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, as well as the orders and decrees of any courts or administrative bodies in any matter affecting the performance of this Agreement.

8. COST PRINCIPLES. To the extent applicable, the Parties shall comply with the Cost Principles established in 2 CFR 200.

9. PRIVILEGES AND IMMUNITIES. All privileges and immunities from liability, exemptions from laws, ordinances, rules, and other benefits that apply to the activities of officers, agents, or employees of the Parties when performing a governmental function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.

10. GOVERNMENTAL FUNCTIONS. The Parties expressly agree that in all things relating to this Agreement, the Parties are performing a governmental function as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of either party, which, in any way, pertains to or arises out of this Agreement, falls within the definition of governmental function.

11. GOVERNMENTAL IMMUNITY. The Parties reserve and do not waive their respective rights of sovereign and governmental immunity and similar rights and do not waive their

rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

- 12. APPLICABLE LAW.** Any disputes arising in connection with this Agreement shall be governed and interpreted by the laws of the State of Texas without regard to its conflict of law provisions. Venue shall be in El Paso County, Texas.
- 13. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof, and no amendment, modification, or alteration of the terms shall be binding unless the same is in writing, dated after the date hereof, and duly executed by the Parties.
- 14. INDEPENDENT STATUS:** No Party to this Agreement is an agent, servant, or employee of any other Party and each Party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.
- 15. SIGNATORY WARRANTY.** Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.
- 16. CONFIDENTIALITY.** The EPMPO acknowledges that this Agreement is subject to Chapter 552 of the Texas Governmental Code (Texas Public Information Act). The release of the Agreement as a whole or a part must comply with the Texas Public Information Act.
- 17. SEVERABILITY.** If any provision of this Agreement shall be held invalid or unenforceable, by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practical, give effect to the intent of this Agreement and be deemed to be enforceable.
- 18. THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries to this Agreement.
- 19. SECTION 791.011 (d) (3), TEXAS GOVERNMENT CODE.** Pursuant to Section 791.011 (d) (3) of the Texas Government Code, each party paying for the performance of governmental function or services will make those payments from current revenues available to the paying party.

[Signatures on the following page.]

APPROVED this ____ day of _____, 2024.

CITY OF EL PASO, TEXAS

Oscar Leeser, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Roberta Brito
Senior Assistant City Attorney

Joaquin Rodriguez
CID Grant Funded Programs Director

(Signatures Continue On Next Page.)

APPROVED this _____ day of _____, 2024.

**EL PASO METROPOLITAN PLANNING
ORGANIZATION:**

Eduardo Calvo
Executive Director

APPROVED AS TO FORM:

Sergio M. Estrada
Kemp Smith LLP
Legal Counsel to EPMPO

DRAFT

**LOCAL MATCH AGREEMENT
EL PASO METROPOLITAN PLANNING ORGANIZATION
INTERNATIONAL BORDER CROSSING SYSTEM-WIDE ANALYSIS**

This Local Match Agreement (the “Agreement”) is made and entered into by and between the El Paso Metropolitan Planning Organization (the “EPMPO”), a political subdivision of the State of Texas, and the New Mexico Economic Development Department (the “EDD”), a political subdivision of the State of New Mexico, and collectively referred to as the “Parties,” or each individually referred to as a “Party.”

RECITALS:

WHEREAS, the EPMPO is the metropolitan planning organization for El Paso County, Texas, southern Doña Ana County, New Mexico, and a portion of Otero County, New Mexico; and

WHEREAS, on January 20, 2023, the EPMPO Transportation Policy Board (the “TPB”) unanimously approved amending the RMS 2050 MTP and RMS 2023-2026 TIP to program the International Border Crossings System-wide Improvements Analysis using \$2,000,000.00 of CAT 7 STP MM funds (the “Plan”); and

WHEREAS, the Federal Highway Administration has approved a total estimated cost of \$2,107,000 for the completion of the Plan with the following cost allocation (1) ***Federal Participation Costs*** - \$1,612,000.00, (2) ***State Participation Costs*** - \$92,000.00, and (3) ***Local Participation Costs*** - \$403,000.00; and

WHEREAS, the Texas Department of Transportation (“TxDOT”) has authorized an advance funding agreement between TxDOT and EPMPO to provide funding for the completion of the Plan as reflected in **Attachment A** (the scope of work) and **Attachment B** (the budget estimate), and which requires that EPMPO secure funding for the Local Participation Costs of \$403,000.00; and

WHEREAS, the EPMPO is required to secure the remaining balance of the Local Participation Costs from local funding sources and complete the Plan described in **Attachment A** (the scope of work) and **Attachment B** (the budget estimate); and

WHEREAS, the EDD desires and agrees to contribute up to a maximum of one hundred fifty thousand and 00/100 dollars (\$150,000.00) towards the Local Participation Costs of \$403,000.00.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises, covenants, and other good and valuable consideration exchanged between the Parties, the Parties hereby agree as follows:

1. RECITALS. All of the above recitals and Attachments A and B are true and correct and are hereby expressly incorporated herein by reference as if set forth fully below.

2. RESPONSIBILITIES OF THE EDD.

- a. The EDD shall dedicate and pay to the EPMPO up to a maximum of one hundred fifty thousand and 00/100 dollars (\$150,000) towards the Local Participation Costs of \$403,000.00.

3. RESPONSIBILITIES OF THE EPMPO.

- a. The EPMPO shall submit quarterly invoices to the EDD in a form and style agreed upon by the Parties to access the local match funds and will apply the funds received from the EDD towards the payment of invoices for services provided in furtherance of performing and completing the Plan.
- b. Perform the work described in the Scope of Services, Attachment A to this Agreement.
- c. Perform the work in accordance with the Project Budget Estimate, Attachment B to this Agreement.
- d. Submit status reports supporting milestones completed as completion of the Plan progresses.
- e. Upon receiving reasonable requests, the EPMPO shall (1) furnish, at such times and in such form as may be requested, periodic information concerning the status of the Plan and the performance of the obligations under this Agreement, and (2) if feasible, authorize the inspection of work done and materials created for the Plan, at reasonable times and places. If the EDD believes the Project is not being developed as originally contemplated, the EDD's designated representatives shall meet with the EPMPO to discuss appropriate actions to ensure any defects in the Plan or deviations are remedied.
- f. Provide an electronic copy of the final approved Plan to the EDD.

4. TERM AND TERMINATION. The term of this Agreement will begin upon the execution of both Parties (the "Effective Date") and will remain in effect until the completion of the Project on or before May 31, 2026. This Agreement shall automatically terminate on May 31, 2026, unless the Parties renew or extend it via a separate written instrument mutually agreed upon by the Parties. Either party may terminate this Agreement, subject to the requirements of Section 4 below.

- a. If a Party seeks to terminate this Agreement due to an alleged breach by the other Party, the Party seeking to terminate must (1) provide written notice to the other Party detailing all elements of the breach or noncompliance, and (2) provide the

other Party with a minimum of thirty (30) days to dispute or cure the alleged breach or noncompliance. If the alleged breach or noncompliance is not cured upon the expiration of thirty (30) days, the Party seeking to terminate may immediately terminate the Agreement by providing written notice to the other party.

- b. If the EDD terminates this Agreement due to a breach or noncompliance, and only after the Parties have used their best efforts to amicably resolve any breach or noncompliance, the EPMPO shall return any unexpended amounts of the Local Participation Costs that have been paid to the EPMPO by EDD, so long as such recapture of funds is authorized by all applicable state and federal laws and regulations.
- 5. COMPLIANCE WITH LAWS.** The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, as well as the orders and decrees of any courts or administrative bodies in any matter affecting the performance of this Agreement.
- 6. COST PRINCIPLES.** To the extent applicable, the Parties shall comply with the Cost Principles established in 2 CFR 200.
- 7. PRIVILEGES AND IMMUNITIES.** All privileges and immunities from liability, exemptions from laws, ordinances, rules, and other benefits that apply to the activities of officers, agents, or employees of the Parties when performing a governmental function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.
- 8. GOVERNMENTAL FUNCTIONS.** The Parties expressly agree that in all things relating to this Agreement, the Parties are performing a governmental function as defined by the Texas Tort Claims Act and the New Mexico Tort Claims Act. The Parties further expressly agree that every act or omission of either party, which, in any way, pertains to or arises out of this Agreement, falls within the definition of governmental function.
- 9. GOVERNMENTAL IMMUNITY.** The Parties reserve and do not waive their respective rights of sovereign and governmental immunity and similar rights and do not waive their rights under the Texas Tort Claims Act and the New Mexico Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.
- 10. APPLICABLE LAW.** Any disputes arising in connection with this Agreement shall be governed and interpreted by the laws of the State of Texas without regard to its conflict of law provisions. The Parties agree that they shall use their best efforts to settle amicably any dispute, controversy, or claim arising out of this Agreement.
- 11. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof, and no amendment,

modification, or alteration of the terms shall be binding unless the same is in writing, dated after the date hereof, and duly executed by the Parties.

- 12. INDEPENDENT STATUS:** No Party to this Agreement is an agent, servant, or employee of any other Party and each Party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.
- 13. SIGNATORY WARRANTY.** Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.

[Signatures on the following page.]

DRAFT

**NEW MEXICO ECONOMIC
DEVELOPMENT DEPARTMENT:**

**EL PASO METROPOLITAN
ORGANIZATION:**

Authorized Signer

Eduardo Calvo

Title

Executive Director

Title

Date

Date

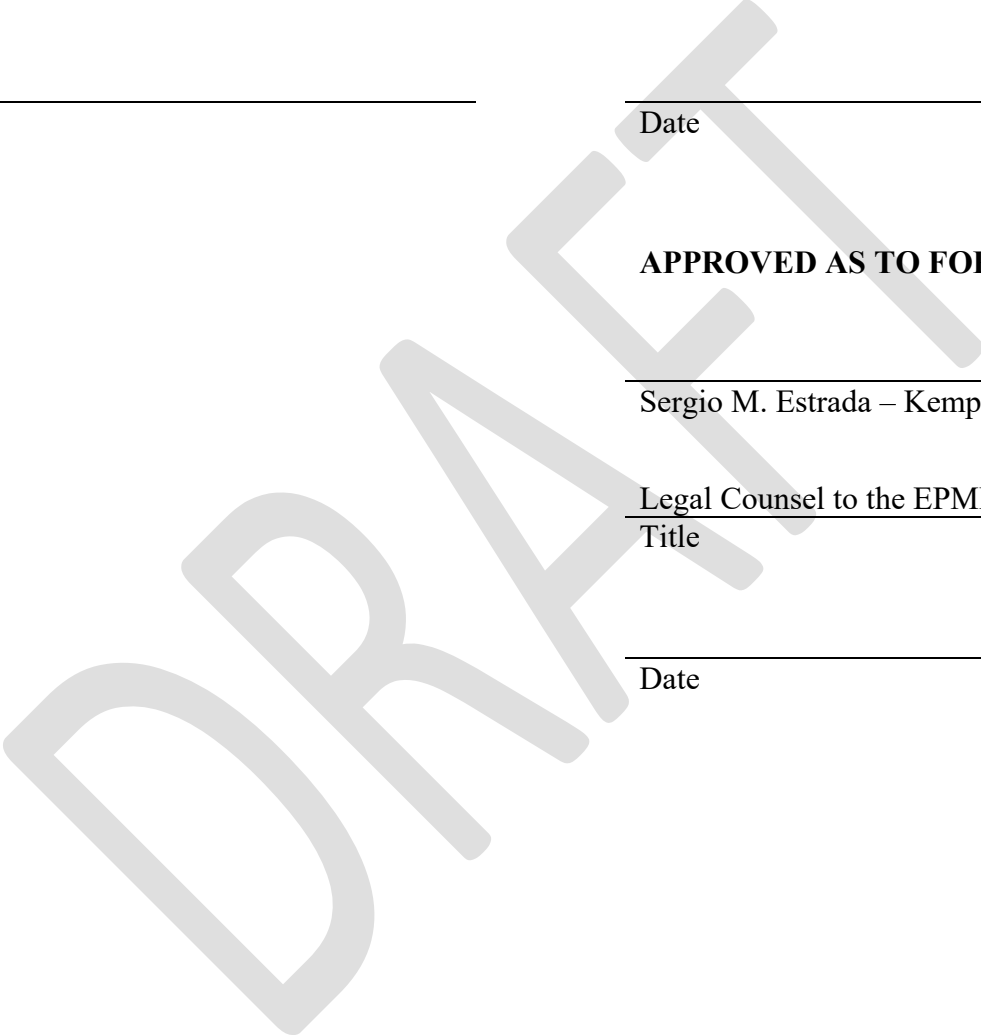
APPROVED AS TO FORM:

Sergio M. Estrada – Kemp Smith, LLP

Legal Counsel to the EPMPO

Title

Date



**LOCAL MATCH AGREEMENT
EL PASO METROPOLITAN PLANNING ORGANIZATION
INTERNATIONAL BORDER CROSSING SYSTEM-WIDE ANALYSIS**

This Local Match Agreement (the “Agreement”) is made and entered into by and between the El Paso Metropolitan Planning Organization (the “EPMPO”), a political subdivision of the State of Texas, and the County of El Paso, Texas (the “County”), a political subdivision of the State of Texas, and collectively referred to as the “Parties,” or each individually referred to as a “Party.”

RECITALS:

WHEREAS, the EPMPO is the metropolitan planning organization for El Paso County, Texas, southern Doña Ana County, New Mexico, and a portion of Otero County, New Mexico; and

WHEREAS, on January 20, 2023, the EPMPO Transportation Policy Board (the “TPB”) unanimously approved amending the RMS 2050 MTP and RMS 2023-2026 TIP to program the International Border Crossings System-wide Improvements Analysis using \$2,000,000.00 of CAT 7 STP MM funds (the “Plan”); and

WHEREAS, the Federal Highway Administration has approved a total estimated cost of \$2,107,000.00 for the completion of the Plan with the following cost allocation (1) **Federal Participation Costs** - \$1,612,000.00, (2) **State Participation Costs** - \$92,000.00, and (3) **Local Participation Costs** - \$403,000.00; and

WHEREAS, the Texas Department of Transportation (“TxDOT”) has authorized an advance funding agreement between TxDOT and EPMPO to provide funding for the completion of the Plan as reflected in **Attachment A** (the scope of work) and **Attachment B** (the budget estimate), and which requires that EPMPO secure funding for the Local Participation Costs of \$403,000.00; and

WHEREAS, the EPMPO is required to secure the remaining balance of the Local Participation Costs from local funding sources and complete the Plan described in **Attachment A** (the scope of work) and **Attachment B** (the budget estimate); and

WHEREAS, the County desires and agrees to contribute up to a maximum of one hundred fifty thousand and 00/100 dollars (\$150,000.00) towards the Local Participation Costs of \$403,000.00.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises, covenants, and other good and valuable consideration exchanged between the Parties, the Parties hereby agree as follows:

- 1. RECITALS.** All of the above recitals and Attachments A and B are true and correct and are hereby expressly incorporated herein by reference as if set forth fully below.

2. RESPONSIBILITIES OF THE COUNTY.

- a.** The County shall dedicate and pay to the EPMPO up to a maximum of one hundred fifty thousand and 00/100 dollars (\$150,000.00) towards the Local Participation Costs of \$403,000.00.

3. RESPONSIBILITIES OF THE EPMPO.

- a.** The EPMPO shall submit quarterly invoices to the County in a form and style agreed upon by the Parties to access the local funds, and will apply those funds towards the payment of invoices for services provided in furtherance of performing and completing the Plan.
- b.** Perform the work described in the Scope of Services, Attachment A to this Agreement.
- c.** Perform the work in accordance with the Project Budget Estimate, Attachment B to this Agreement.
- d.** Submit status reports supporting milestones completed as completion of the Plan progresses.
- e.** Upon receiving reasonable requests, the EPMPO shall (1) furnish, at such times and in such form as may be requested, periodic information concerning the status of the Plan and the performance of the obligations under this Agreement, and (2) if feasible, authorize the inspection of work done and materials created for the Plan, at reasonable times and places. If the County believes the Project is not being developed as originally contemplated, the County's designated representatives shall meet with the EPMPO to discuss appropriate actions to ensure any defects in the Plan or deviations are remedied.
- f.** Provide an electronic copy of the final approved Plan to the County.

4. TERM AND TERMINATION. The term of this Agreement will begin upon the execution of both Parties (the "Effective Date") and will remain in effect until the completion of the Project on or before May 31, 2026. This Agreement shall automatically terminate on May 31, 2026, unless the Parties renew or extend it via a separate written instrument mutually agreed upon by the Parties. Either party may terminate this Agreement, subject to the requirements of Section 4 below.

- a.** If a Party seeks to terminate this Agreement due to an alleged breach by the other Party, the Party seeking to terminate must (1) provide written notice to the other Party detailing all elements of the breach or noncompliance, and (2) provide the other Party with a minimum of thirty (30) days to dispute or cure the alleged breach or noncompliance. If the alleged breach or noncompliance is not cured upon the

expiration of thirty (30) days, the Party seeking to terminate may immediately terminate the Agreement by providing written notice to the other party.

- b.** If the County terminates this Agreement due to a breach or noncompliance, and only after the Parties have used their best efforts to amicably resolve any breach or noncompliance, the EPMPO shall return any unexpended amounts of the Local Participation Costs that have been paid to the EPMPO by County, so long as such recapture of funds is authorized by all applicable state and federal laws and regulations.
- 5. COMPLIANCE WITH LAWS.** The Parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, as well as the orders and decrees of any courts or administrative bodies in any matter affecting the performance of this Agreement.
- 6. COST PRINCIPLES.** To the extent applicable, the Parties shall comply with the Cost Principles established in 2 CFR 200.
- 7. PRIVILEGES AND IMMUNITIES.** All privileges and immunities from liability, exemptions from laws, ordinances, rules, and other benefits that apply to the activities of officers, agents, or employees of the Parties when performing a governmental function shall apply to such officers, agents, or employees to the same extent while engaged in the performance of any of their functions and duties under the terms and provisions of this Agreement.
- 8. GOVERNMENTAL FUNCTIONS.** The Parties expressly agree that in all things relating to this Agreement, the Parties are performing a governmental function as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of either party, which, in any way, pertains to or arises out of this Agreement, falls within the definition of governmental function.
- 9. GOVERNMENTAL IMMUNITY.** The Parties reserve and do not waive their respective rights of sovereign and governmental immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.
- 10. APPLICABLE LAW.** Any disputes arising in connection with this Agreement shall be governed and interpreted by the laws of the State of Texas without regard to its conflict of law provisions. The Parties agree that they shall use their best efforts to settle amicably any dispute, controversy, or claim arising out of this Agreement.
- 11. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof, and no amendment, modification, or alteration of the terms shall be binding unless the same is in writing, dated after the date hereof, and duly executed by the Parties.

12. INDEPENDENT STATUS: No Party to this Agreement is an agent, servant, or employee of any other Party and each Party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

13. SIGNATORY WARRANTY. Each signatory warrants that the signatory has the necessary authority to execute this Agreement on behalf of the entity represented.

[Signatures on the following page.]

DRAFT

COUNTY OF EL PASO:

EL PASO METROPOLITAN ORGANIZATION:

Authorized Signer

Eduardo Calvo

Title

Executive Director

Title

Date

Date

APPROVED AS TO FORM:

Sergio M. Estrada – Kemp Smith, LLP

Legal Counsel to the EPMPO

Title

Date

