Example Contracts –Most MPOs

THE STATE OF TEXAS
THE COUNTY OF TRAVIS **

THIS CONTRACT IS MADE by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called "the Department," the _____ Policy Committee, and the City of _____, which has been designated the Metropolitan Planning Organization (MPO) of the _____ urbanized area(s) and which serves as the fiscal agent for the MPO.

W I T N E S S E T H

WHEREAS, 23 USC 134 and 49 USC Section 5301 et seq. require that Metropolitan Planning Organizations, in cooperation with the Department and transit agencies, develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, 23 USC 104(f), authorizes Metropolitan Planning (PL) Funds and 49 USC Section 5301 et seq. authorizes funds to be made available to Metropolitan Planning Organizations designated by the Governor to support the urban transportation planning process; and,

WHEREAS, the federal share payable for authorized activities using 49 USC Section 5303 and metropolitan planning (PL) funds is 80% of allowable costs; and

WHEREAS, 221.003 and 201.703 Texas Transportation Code authorize the Department to expend federal and state funds for improvements to the State Highway System, and for improvements to roads not on the system of the state highways, as may be necessary for proper construction and prosecution of the work; and,

WHEREAS, 221.003 and 201.703 Texas Transportation Code authorize the Department to provide the necessary cash or in-kind match of 20% of allowable costs for metropolitan transportation planning for the integrated network of Federal, State, and local roads; and,

WHEREAS, metropolitan planning (PL) funds, and other federal transportation funds that may be used for planning (e.g., Surface Transportation Program, National Highway System, Congestion Mitigation and Air Quality, etc.) and 49 USC Section 5303 funds are to be used in conjunction with work conducted under the terms of this contract: and,

WHEREAS, the Governor of the State of Texas has designated the City of _____, acting through their Transportation Policy Committee, for the MPO for the above-mentioned urbanized area(s): and,

WHEREAS, the Governor of the State of Texas and the City of _____have executed an agreement pursuant to the MPO designation:

WHEREAS, an area equal to or larger that the above-mentioned urbanized area has been delineated in accordance with federal and state guidelines where required metropolitan transportation planning activities may take place; and,

WHEREAS, 23 CFR 4210117(a) requires that in accordance with 49 CFR 18.40, the State Department of Transportation (DOT) shall monitor all activities performed by its staff or by subrecipients with FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met; and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, the Department and the MPO do agree to as follows:

A G R E E M E N T

Article 1. Contract Period

This contract becomes effective _____, or when signed by all parties hereto, whichever is later. The Department shall not continue its obligation to the MPO under this contract if the Governor's designation of the MPO is withdrawn; if federal funds cease to become available; or if the contract is terminated as hereinafter provided.

This agreement expires on _____. No fewer than 120 days before the expiration date, the Department may, at its sole discretion, exercise in writing an option to extend the agreement by a period of no more than ___ years. The Department may exercise this option no more than ___ times. If all terms and conditions of this contract remain viable; and no amendment to the existing contract; or new contract is required; a letter from the Department to the MPO shall constitute renewal of the contract subject to all terms and conditions herein specified. However, an amendment or a new contract can be executed, if necessary. Any amendment shall be entered into in accordance with Article 33 of this contract.

Article 2. Responsibilities of the Department

The responsibilities of the Department are as follows:

1. Make available to the MPO all of the appropriate federal transportation planning funds and provide required non-federal, in-kind matching funds as authorized by the Texas Transportation Commission. Federal transportation planning funds will be distributed to the MPOs based on formulas mutually agreed upon by the Department, the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The Department will consult with TEMPO before agreeing on a formula.

2. Provide to the MPO, as appropriate, technical assistance and guidance for the collection, processing, and forecasting of socio-economic data needed for the development of traffic forecasts, plans, programs, and planning proposals within the metropolitan area.

3. Collect, process and forecast vehicular travel volume data in cooperation with the MPO, as appropriate.

4. Jointly promote the development of the intermodal transportation system

within the metropolitan area by identifying points in the system where access, connectivity, and coordination between the modes and inter-urban facilities would benefit the entire system.

5. Share with the MPO information and information sources concerning transportation planning issues as those issues relate to this contract.

Article 3. Responsibilities of the MPO

The MPO is an organization created to ensure that existing and future expenditures for transportation projects and programs are based on a continuing, cooperative, and comprehensive planning process. The responsibilities of the MPO are as follows:

1. Use funds provided in accordance with Article 2, Section 1 of this contract to develop and maintain a comprehensive regional transportation planning program in conformity with the requirements of 23 USC Section 134(f) and 49 USC Section 5303.

2. Assemble and maintain an adequate, competent staff with such knowledge and experience that will enable them to perform all appropriate MPO activities required by law.

3. Collect, maintain, and forecast appropriate socio-economic, roadway and travel data on a timely basis, in cooperation with the Department.

4. Prepare all required plans, programs, reports, data and required certifications in a timely manner.

5. Develop a Metropolitan Transportation Plan (MTP), a Transportation Improvement Program (TIP), and a Unified Planning Work Program (UPWP) for the Metropolitan Planning Area that are consistent with the Statewide Transportation Plan, as required by the state and federal law. At a minimum the MPO shall consider in their planning process the applicable factors outlined in 23 USC Section 134(f).

6. Share information and information sources concerning transportation planning issues.

Article 4. Responsibilities of the MPO Policy Committee

The MPO Policy Committee is the policy body that is the forum established under 23 USC §134 with the responsibility for establishing overall transportation policy for the MPO and for making required approvals. The MPO Policy Committee is comprised of those governmental agencies identified in the original designation agreement and those agencies or organizations subsequently added to the membership of the committee. The responsibilities of the MPO Policy Committee are as follows:

1. Ensure that requirements of 23 USC §§134 and 135 and 49 USC, Chapter 53, are carried out.

2. Use funds provided in accordance with Article 2, Section 1 of this contract to develop and maintain a comprehensive regional transportation planning program in accordance with requirements of 23 USC §134(f) and 49 USC §5303.

3. Develop and adopt an MTP for the Metropolitan Planning Area that is consistent with the Statewide Transportation Plan required by state and federal laws; a TIP and a UPWP; and such other planning documents and reports that may be required by state or federal laws or regulations.

4. The MPO Policy Committee shall have sole responsibility to hire, supervise, evaluate and terminate the Transportation Planning Director.

5. The MPO Policy Committee shall provide planning policy direction to the Transportation Planning Director.

Article 5. Responsibilities of the Fiscal Agent

The Fiscal Agent for the MPO is the entity responsible for providing fiscal, human resource and staff support services to the MPO.

The responsibilities of the fiscal agent are as follows:

1. Maintain required accounting records for state and federal funds consistent with current federal and state requirements.

2. Provide all appropriate funding, as identified by fiscal year in the UPWP, to allow the MPO staff to effectively and efficiently operate the program.
3. Provide human resource services to the MPO.

4. Provide benefits for the MPO staff that shall be the same as the fiscal agent normally provides its own employees; or as determined through an agreement between the MPO Policy Committee and the fiscal agent. Costs incurred by the fiscal agent for these benefits may be reimbursed by the MPO.

5. May establish procedures and policies for procurement and purchasing in cooperation with the MPO Policy Committee.

Article 6. Responsibilities of the Transportation Planning Director

The responsibilities of the MPO Transportation Planning Director are as follows:

1. Shall administer the MPO's work program. The Director shall serve in a full-time capacity for Transportation Management Areas. The Director shall take planning policy direction from and be responsible to the designated MPO Policy Committee.

2. Shall act as a liaison, relevant to the Department's transportation planning activities, with the Department's district office and the Department's Transportation Planning and Programming Division's representative.

3. Shall oversee and direct all MPO transportation planning staff work performed using MPO funds.

4. Shall prepare and submit all required plans, programs, reports, data, and certifications in a timely manner.

5. Develop and present to the MPO Policy Committee, an MTP for the metropolitan planning area that is consistent with the Statewide Transportation Plan required by state and federal laws; a TIP and a Unified Planning Work Program; and such other planning documents and/or reports that may be required by state or federal laws or regulations.

6. Share information and information resources concerning transportation planning issues.

Article 7. Unified Planning Work Program (UPWP)

1. Each year the MPO shall submit to the Department a program of work that includes goals, objectives and/or tasks required by each of the several agencies involved in the metropolitan transportation planning process. This program of work is to be called the Unified Planning Work Program, or any successor name. Each year's approved UPWP shall be incorporated into this contract by reference. The UPWP shall be approved by the MPO Policy Committee, in accordance with 23 CFR 450.314 (a) (1).

2. The UPWP will be prepared for a period of one year unless otherwise agreed to by the Department, the MPO, and the MPO Policy Committee. The UPWP shall reflect only that work that can be accomplished during the time period of the UPWP, in accordance with 43 TAC 15.4 (b)(6), 23 CFR 420.113 (a)(5) and 23 CFR 420.115 (a).

3. The budget and statement of work will be included in the UPWP. The MPO may not incur costs until final approval of the UPWP is granted. The maximum amount payable will not exceed the budget included in the UPWP.

4. The effective date of each UPWP will be October 1 of each year or the date of approval from the appropriate oversight agency, whichever occurs later. On that date, the UPWP shall constitute a new federal project and shall supersede the previous UPWP.

5. The UPWP shall comply with all applicable federal and state requirements and will describe metropolitan transportation and transportation-related planning activities anticipated in the area.

6. The UPWP shall reflect transportation planning work to be funded by federal, state or local transportation, or transportation-related (e.g., air quality), planning funds.

7. The use of federal metropolitan transportation planning funds shall be limited to transportation planning activities affecting the transportation system within the Metropolitan Area Boundary (MAB). If an MPO determines that data collection and analysis activities relating to land use, demographics, or traffic or travel information, conducted outside the MAB, affect the transportation system within the MAB, then those activities may be undertaken using federal planning funds, provided that the activities are specifically identified in an approved UPWP. Any other costs incurred for transportation planning activities outside the MAB will not be eligible for reimbursement.

8. Travel outside the State of Texas by MPO staff and other agencies participating in the MPO planning process shall be approved by the department if funded with federal transportation planning funds. Approval must be received prior to incurring any costs associated with the actual travel (e.g., registration fee). This provision will not apply if the travel is at the request of the department. Travel to the State of Arkansas by the Texarkana MPO staff and travel to the State of New Mexico by the El Paso MPO staff shall be considered in-state travel.

9. The cost of travel incurred by elected officials will not be eligible for reimbursement with federal transportation planning funds.

10. The use of federal transportation planning funds shall be limited to corridor/subarea level planning or multimodal or system wide transit planning studies. Major investment studies and environmental studies are considered corridor level planning. The use of such funds beyond environmental document preparation or for specific project level planning and engineering (efforts directly related to a specific project instead of a corridor) is not allowed.

11. The Department, in consultation with Texas Metropolitan Planning Organizations, will develop a time line for development of the UPWP. Failure to adhere to the time line may result in a delay in the authorization to the MPO to proceed with incurring costs.

12. The Department, in cooperation with Texas Metropolitan Planning Organizations, shall develop a standard UPWP format to be used in accordance with 430 TAC 15.4 (a)(4). A UPWP submitted in a different format will not be approved. The UPWP and subsequent amendments may be submitted electronically.

13. The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments prior to receiving written approval from the Department. Any costs incurred prior to receiving approval shall not be eligible for reimbursement from federal transportation planning funds.

14. If the individual work task cost exceeds the task budget by more than 25 percent, the UPWP shall be revised, approved by the MPO and submitted for approval.

15. The MPO Policy Committee shall not delegate approval authority of the UPWP or subsequent amendments, except for corrective actions. Corrective actions do not change the scope of work, result in an increase or decrease in the amount of task funding of affect the overall budget, examples include typographical, grammatical or syntax corrections.

16. Should any conflict be discovered between the terms of this contract and the UPWP, the terms of this contract shall prevail.

17. The MPO is not authorized to request payment for any work it may perform that is not included in the current UPWP.

Article 8. Compensation

The Department's payment of any cost incurred hereunder is contingent upon the following:

1. Sufficient federal funds are available to the Department for making payments hereunder.

2. The incurred cost is authorized in the UPWP. The maximum amount payable under this contract shall not exceed the total budgeted amount outlined in the UPWP in accordance with 43 TAC 15.4 (b) (7).

3. The cost has actually been incurred by the MPO and meets the following criteria:

   (a) is verifiable from MPO records;
   (b) is not included as match funds for any other federally-assisted program;
   I is necessary and reasonable for the proper and efficient accomplishment of program objectives;
   (d) is the type of charge that would be allowable under OMB Circular A-87 Revised, "Cost Principles for State, Local and Indian Tribal Governments"; and
   (e) is not paid by the Department or federal government under another assistance program unless authorized to be used as match under the other federal or state agreement and the laws and regulations to which it is subject.

4. After October 1 of each year, the Department will issue a work order establishing the effective date of work and the total funds authorized to the MPO. If the UPWP is subsequently revised necessitating a revision to the original work order, or the Department deems a revision necessary, a revised work order may be issued at any time throughout the fiscal year. If the amount in the UPWP differs from the amount in the work order, the amount in the work order prevails.

5. The MPO is authorized to submit requests for payment of authorized costs incurred hereunder on a semi-monthly basis, but no more than 24 times a year; and no less than monthly as expenses occur. Each request for payment will be submitted in a manner acceptable to the Department, which includes at a minimum the following information:
   (a) UPWP budget category or line item;
   (b) description of the cost;
   I quantity;
   (d) price;
   (e) extension; and
   (f) total

6. The final bill from the previous fiscal year shall be submitted to the Department no later than December 31. Any bills submitted after December 31 will be processed against the current year's UPWP.

7. Noncompliance with the terms of Article 3 may result in cancellation of work authorization and/or suspension of payments after a 30-day notification by the Department to a Metropolitan Planning Organization's Policy Committee.

Article 9. Reporting

To permit program monitoring and reporting, the MPOs shall prepare and submit an annual performance and expenditure report of progress to the Department no later than December 31 of each year. A uniform format for the annual report will be established by the Department in cooperation with Texas Metropolitan Planning Organizations. If task expenditures overrun or under-run a budgeted task amount by 25% or more, the annual performance and expenditure report must include an explanation as to why the over-run or under-run occurred.

Article 10. Indemnification

To the extent possible under state law, the MPO shall save harmless the Department from all claims and liability due to the acts or omissions of the MPO, its agents or employees. To the extent possible under state law, the MPO also agrees to save harmless the Department from any and all expenses, including attorney fees, all court costs and awards for damages, incurred by the Department in litigation or otherwise resisting such claims or liabilities as a result of any activities of the MPO, its agents or employees.

Further, to the extent possible under state law, the MPO agrees to protect, indemnify, and save harmless the Department from and against all claims, demands and causes of action of every kind and character brought by any employee of the MPO against the Department due to personal injuries and/or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the MPO or the Department.

Article 11. Inspection of Work and Retention of Documents

The Department and, when federal funds are involved, the U. S. Department of Transportation,

and any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the MPO or a subcontractor, the MPO shall provide or require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

The MPO agrees to maintain all books, documents, papers, computer generated files, accounting records and other evidence pertaining to costs incurred and work performed hereunder, and shall make such materials available at its office during the time period covered and for four years from the date of final payment under the UPWP. Such materials shall be made available during the specified period for inspection by the Department, the U.S. Department of Transportation and the Office of the Inspector General of the U.S. Department of Transportation and any of their authorized representatives for the purpose of making audits, examinations, excerpts and transcriptions.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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.

Article 12. Work Performance

All work performed hereunder shall be carried out in a professional and orderly manner, and the products authorized in the UPWP shall be accurate and exhibit high standards of workmanship.

Article 13. Disputes

The MPO shall be responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of contract work. In the event of a dispute between the Department and the Metropolitan Planning Organization concerning the work performed hereunder in support of the urban transportation planning process, the dispute shall be resolved through binding arbitration. Furthermore, the arbiter shall be mutually acceptable to the Department and the MPO.

Article 14. Non-collusion

The MPO shall warrant that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this contract. If the MPO breaches or violate~~s~~ this warranty, the Department shall have the right to annul this contract without liability or, in its discretion, to deduct from the

contract price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

Article 15. Subcontracts

Any subcontract for services rendered by individuals or organizations not a part of the MPO's organization shall not be executed without prior authorization and approval of the subcontract by the Department and, when federal funds are involved, the U.S. Department of Transportation. If the work for the subcontract is authorized in the current approved UPWP, and if the MPO's procurement procedures for negotiated contracts have been approved by the Department either directly or through self-certification by the MPO, the subcontract shall be deemed to be authorized and approved, provided that the subcontract includes all provisions required by the Department and the U.S. Department of Transportation.

Subcontracts in excess of $25,000 shall contain all required provisions of this contract.

No subcontract will relieve the MPO of its responsibility under this contract.

Article 16. Termination

The Department may terminate this contract at any time before the date of completion if the Governor withdraws his designation of the MPO. The Department or the MPO may seek termination of this contract pursuant to Article 13 if either party fails to comply with the conditions of the contract. The Department or the MPO shall give written notice to all parties at least 90 days prior to the effective date of termination and specify the effective date of termination.

The Department may terminate this contract for reasons of its own, subject to agreement by the MPO and the Policy Committee.

If both parties to this contract agree that the continuation of the contract would not produce beneficial results commensurate with the further expenditure of funds, the parties shall agree upon the termination conditions.

Upon termination of this contract, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc., prepared by the MPO shall, at the option of the Department, be delivered to the Department.

The Department shall reimburse the MPO for those eligible expenses incurred during the contract period which are directly attributable to the completed portion of the work covered by this contract, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The MPO shall not incur new obligations for the terminated portion after the effective date of termination.

Article 17. Force Majeure

Except with respect to defaults of subcontractors, the MPO shall not be in default by reason of

failure in performance of this contract in accordance with its terms (including any failure by the MPO to progress in the performance of the work) if such failure arises out of causes beyond the control and without the default or negligence of the MPO. Such causes may include but are not limited to acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the MPO.

Article 18. Remedies

Violation or breach of contract terms by the MPO shall be grounds for termination of the contract. Any costs incurred by the Department arising from the termination of this contract shall be paid by the MPO.

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

Article 19. Gratuities

Employees of the Department or the MPO shall not accept any benefits, gifts or favors from any person doing business with, or who may do business with, the Department or the MPO under this contract.

Any person doing business with, or who may do business with, the Department or the MPO under this contract may not make any offer of benefits, gifts or favors to Department or the MPO employees. Failure on the part of the Department or the MPO to adhere to this policy may result in termination of this contract.

Article 20. Compliance with Laws

The parties to this contract shall comply with all federal and state laws, statutes, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this contract, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the MPO shall furnish the Department with satisfactory proof of its compliance therewith.

Article 21. Successors and Assigns

The MPO or the Department shall not assign or transfer its interest in this agreement without written consent of the other party.

Article 22. Debarment/Suspension

The MPO is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.

The MPO shall require any party to a subcontract or purchase order awarded under this contract as specified in Title 49 of the Code of Federal Regulations, Part 29 (Debarment and Suspension) to certify its eligibility to receive federal funds and, when requested by the Department, to furnish a copy of the certification.

Article 23. Equal Employment Opportunity

The parties to this contract agree to comply with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR 60).

Article 24. Nondiscrimination

During the performance of this contract, the MPO, its assigns and successors in interest, agree to the following:

1. **Compliance with Regulations:** The MPO shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21 and Title 26, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The MPO, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, national origin, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MPO shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 and Part 710.405(b) or the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the MPO for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the MPO [policy committee or fiscal agent] of the MPO's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age or disability.

4. **Information and Reports:** The MPO shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the U.S. Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information

required of the MPO [policy committee or fiscal agent] is in the exclusive possession of another who fails or refuses to furnish this information, the MPO [policy committee or fiscal agent] shall so certify to the Department or the U.S. Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the MPO's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including but not limited to:
   - withholding of payments to the MPO [policy committee or fiscal agent] under the contract until the MPO complies, and/or
   - cancellation, termination, or suspension of the contract in whole or in part.

6. **Incorporation of Provisions:** The MPO shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The MPO shall take such action with respect to any subcontract or procurement as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, in that event, an MPO [policy committee or fiscal agent] may request the United States to enter into such litigation to protect the interests of the United States.

Article 25. Nondiscrimination on the Basis of Disability

The MPO agrees that no otherwise qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The MPO shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth at 49 CFR Part 27, and any amendments thereto.

Article 26. Disadvantaged Business Enterprise Program Requirements

It is the policy of the U.S. Department of Transportation that Minority Business Enterprises as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently the Minority Business Enterprise requirements of 49 CFR 26, apply to this contract as follows:

- The MPO agree to insure that Minority Business Enterprises as defined in 49 CFR 26, Subpart A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, the MPO [policy committee and fiscal agent] shall take all necessary and reasonable steps in accordance with 49 CFR 26, to insure that Minority Business

Enterprises have the maximum opportunity to compete for and perform contracts.

- The MPO and any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts funded in whole or in part with federal funds.

These requirements shall be included (i.e., written literally) in the language of any subcontract.

Failure to carry out the requirements set forth above shall constitute a breach of contract and, after the notification of the Department, may result in termination of the contract by the Department or other such remedy as the Department deems appropriate.

Article 27. Procurement

The MPO shall maintain [the approved] written procurement procedures that meet or exceed the requirements of 49 CFR 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," as it may be revised or superseded. These procedures will be used for all acquisitions authorized in any UPWP.

The MPO agree to comply with applicable Buy America requirements set forth in Section 401 of the Surface Transportation Assistance Act of 1978 (P.L. 95-599) and the Federal Transit Administration's Buy America regulations in 49 CFR 660.

The MPO agree to comply with the cargo preference requirements set forth in 46 USC 1241 and Maritime Administration regulations set forth in 46 CFR 381.

Article 28. Environmental Protection and Energy Efficiency

The MPO agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857[h]); Section 508 of the Clean Water Act (33 USC 1368); Executive Order 11738 and Environmental Protection Agency regulations (40 CFR, Part 15). The MPO further agrees to report violations to the Department.

The MPO agrees to recognize standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Article 29. Property Management

The MPO shall maintain written property management procedures that meet or exceed the requirements of 49 CFR 18, "Uniform Administrative Requirements for Grants and Agreements with State and Local Governments," as it may be revised or superseded. These procedures will be used for any property acquired in whole or in part with federal and state funds provided through this contract.

Article 30. Audit

The MPO shall comply with the requirements of OMB Circular A-133, “Audit Requirements for State and Local Governments,” and shall promptly furnish the Department a copy of each audit report. The MPO shall be responsible for any funds determined to be ineligible for federal reimbursement, and shall reimburse the Department the amount of any such funds previously provided to it by the Department.

Article 31. Control of Drug Use

The MPO agrees to comply with the terms of the Federal Transit Administration regulation, “Control of Drug Use in Mass Transportation Operations,” set forth at 49 CFR Part 653.

Article 32. Restrictions on Lobbying

Pursuant to Section 319 of Public Law 101-121, which generally prohibits recipients of federal funds from using those monies for lobbying purposes, the MPO shall comply with the Special Provision “New Restrictions on Lobbying.”

Article 33. Amendments

Any changes to one or more of the terms and conditions of this contract shall not be valid unless made in writing and agreed to by the parties hereto before the change is implemented.

Article 34. Distribution of Products

The MPO will provide a number of copies to be specified by the Department of all information, reports, proposals, brochures, summaries, written conclusions, graphic presentations, and similar materials developed by the MPO and the Policy Committee and financed in whole or in part as provided herein. All reports published by the MPO shall contain a prominent credit reference to the Department and the U.S. Department of Transportation, Federal Highway Administration and Federal Transit Administration:

> *Prepared in cooperation with the Texas Department of Transportation and the U.S. Department of Transportation, Federal Highway Administration and Federal Transit Administration.*

Upon termination of this contract, all documents prepared by the MPO or furnished to the MPO and the Policy Committee by the Department, shall be delivered to the Department. All such documents, photographs, calculations, programs and other data prepared or used under this contract may be used by the Department without restriction or limitation of further use.

Article 35. Legal Construction

In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability

shall not affect any other provision thereof and this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 36. Prior Agreements

This contract constitutes the sole and only contract of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

Article 37. Copyrights

The Department and the U.S. Department of Transportation shall, with regard to any reports or other products produced under this contract, reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Article 38. Signatory Warranty

The undersigned signatories hereby represent and warrant that they are officers and that they have full and complete authority to enter into this contact.

IN WITNESS WHEREOF, the undersigned have caused this contract to be executed, but the contract shall not be valid until signed by a duly authorized representative of each party.

The MPO Policy Committee	The Fiscal Agent
By_____	By_____
Title_____	Date_____
Date_____	Title_____

THE STATE OF TEXAS

Executed for the Executive Director, and approved for the Texas Transportation Commission, for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By_____
Director, Transportation Planning
and Programming Division

Date_____

For the purpose of this contract, the following addresses shall be used to mail all required notices, reports, claims, and correspondence:

For the TxDOT Transportation Planning and Programming Division:
XXXXXXXXXXXXXXXXXXXX

For the TxDOT District Study Office:
XXXXXXXXXXXXXXXXXXXX

For the Fiscal Agent of the MPO:
XXXXXXXXXXXXXXXXXXXX

For the Policy Committee of the MPO:
XXXXXXXXXXXXXXXXXXXX