

Appendix 3-H

Generic Metropolitan Transportation Planning Contract

GENERIC METROPOLITAN TRANSPORTATION PLANNING CONTRACT

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 Xxxxxxxxxx Urban Transportation Study Policy Committee, which has been designated as the Metropolitan Planning Organization of the Xxxxxxx urbanized area(s), hereinafter called the MPO policy committee, and the Xxxxxxxxxxxxxx, which has been designated as the Fiscal Agent for the Metropolitan Planning Organization, hereinafter called the fiscal agent.

WITNESSETH

WHEREAS, a Metropolitan Planning Organization is the forum for cooperative transportation decisionmaking, as designated by the Governor(s) and units of general purpose local government representing 75 percent of the affected metropolitan population, pursuant to 23 U.S.C. §134; and

WHEREAS, the MPO policy committee, the policy body that is the forum established pursuant to 23 U.S.C. §134 with the responsibility for establishing overall transportation for, and taking the required approval actions as the Metropolitan Planning Organization, is comprised of those governmental agencies identified in the original designation agreement and those agencies or organizations subsequently added to the membership of the board; and

WHEREAS, the Fiscal Agent for the Metropolitan Planning Organization is the city, county, council of governments or other governmental entity responsible for, by written agreement between the MPO policy committee and the fiscal agent, providing fiscal, personnel and staff support services to the MPO policy committee and the staff of the Metropolitan Planning Organization; and

WHEREAS, 23 U.S.C. §134 and 49 USC §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, Title 23, U.S.C. and 49 U.S.C. §5301 et seq., authorize transportation planning funds, including 23 U.S.C. §104(f) metropolitan planning 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 transportation planning funds is 80% of allowable costs; and

WHEREAS, §221.003, §201.703, and §222.001 et seq. of the Texas Transportation Code authorize the department to expend federal and state funds for improvements to the State Highway System, and may expend federal and state funds 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, those sections of the Texas Transportation Code also authorize the department to provide the necessary 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 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) are to be used in conjunction with work conducted under the terms of this contract; and

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

WHEREAS, the Governor of the State of Texas, acting by and through the department has designated the Xxxxxxxx Urban Transportation Study Policy Committee to be the MPO for the above-mentioned urbanized area(s); 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, the MPO policy committee, and the fiscal agent do mutually agree to as follows:

A G R E E M E N T

Article 1. Contract Period

This agreement becomes effective when signed by all parties hereto and shall extend to Xxxxxxxx. Nothing, however, shall require the department to continue its obligations to the MPO under this agreement if the Governor's designation of the MPO is withdrawn, federal funds cease to become available, or if the contract is terminated as hereinafter provided.

No later than two months prior to Xxxxxxxx, this agreement shall be reviewed. If all terms and conditions of this agreement remain viable and no amendment is required, a letter from the department to the MPO shall constitute renewal of the agreement, subject to all terms and conditions herein specified. Any amendment shall be entered into in accordance with Article 30 of this agreement.

Article 2. Responsibilities of the Department

The responsibilities of the department are as follows:

1. Make available to the MPO the appropriate federal transportation planning funds and the 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 a formula mutually agreed to by the department, Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA).
2. Provide, as appropriate, technical assistance and/or guidance in the collection, processing, and forecasting of socioeconomic data needed for development of traffic forecasts, and planning proposals within the Metropolitan Planning Area.
3. Collect, process, and forecast vehicular travel volume data in cooperation with the MPO.
4. Jointly promote the intermodal development of the State's transportation system within the Metropolitan Planning Area by identifying points in the system where access, connection, and coordination between the modes and inter-urban facilities would benefit the entire system.
5. Share information and information sources concerning transportation planning issues.

Article 3. Responsibilities of the Fiscal Agent and the MPO

The responsibilities of the fiscal agent are as follows:

1. Maintain required accounting records for state and federal funds consistent with current state and federal requirements.
2. Provide the MPO policy committee the opportunity to provide input and make recommendations regarding the candidates for the Transportation Planning Director. Any Transportation Planning Director nominated by the fiscal agent to administer the program must be formally designated by the MPO policy committee.
3. Provide funding to allow the MPO staff to operate the program.

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, §5301, et seq. 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 conformity with requirements of 23 USC §134(f) and 49 USC §5303.
3. Adopt a Metropolitan Transportation Plan for the metropolitan planning area that will complement the Statewide Transportation Plan required by state and federal laws, a Transportation Improvement Program and a Unified Planning Work Program and such other planning documents and reports that may be required by state or federal laws or regulations.
4. Shall provide input and make recommendations regarding the candidates for the Transportation Planning Director. The MPO policy committee shall designate the Transportation Planning Director to administer the program. The Transportation Planning Director, who shall serve in a full time capacity for Transportation Management Areas (areas with populations that exceed 200,000 according to the most recent decennial census) shall take planning policy direction from and be responsible solely to the MPO policy committee.
5. Assemble and maintain an adequate, competent staff to perform all appropriate transportation planning activities required by law. All employees of the MPO shall have such knowledge and experience as will enable them to perform the duties assigned to them.
6. Establish fiscal and personnel management agreements between the MPO policy committee and the fiscal agent to identify respective relationships, roles, and responsibilities.

The responsibilities of the Transportation Planning Director are as follows:

1. Supervise the MPO staff regardless of agency affiliation.
2. Serve as a liaison to the department's transportation planning program through the department's district office and the department's Transportation Planning and Programming Division's representative.

3. In cooperation with the department, collect, maintain, forecast, and report to the department on a timely basis appropriate socioeconomic, roadway, and travel data.
4. Prepare and submit all required plans, reports, programs, data, and certifications in a timely manner.
5. Develop and present to the MPO policy committee a Metropolitan Transportation Plan for the metropolitan planning area that will complement the Statewide Transportation Plan required by state and federal laws, a Transportation Improvement Program and a Unified Planning Work Program and such other planning documents and reports that may be required by state or federal laws or regulations.
6. Share information and information resources concerning transportation planning issues.

Article 4. Unified Planning Work Program

1. Each year the MPO policy committee shall submit to the department for approval a program of work which 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 (UPWP) or any name that may be specified in later federal or state regulations, and each year's approved UPWP shall be incorporated into this contract by reference.
2. The UPWP will be prepared for a period of one year only. The UPWP shall reflect only that work that can be accomplished during the fiscal year.
3. The budget and statement of work for each year of this contract will be as included in each UPWP. The department must approve the UPWP in writing before any costs may be incurred thereunder for the new fiscal year and the maximum amount payable for each year will not exceed the estimated budget included in the UPWP.
4. The effective date of each UPWP will be October 1 of each fiscal year or the date of department approval, whichever occurs later. The period of authorization is from October 1 to September 30 for activities outlined in the approved UPWP for each fiscal year. 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 during the next one-year period.
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 policy committee and staff 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 Metropolitan Planning Area 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 was at the request of the department.
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 systemwide 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 will develop a time line for development of the UPWP by the MPO staff. Failure to adhere to the time line may result in a delay in the authorization to the MPO fiscal agent to proceed in incurring costs.
12. The department shall develop a standard UPWP format to be used by the MPO staff. A UPWP submitted in different format will not be approved.
13. The MPO policy committee, fiscal agent and staff shall not incur any costs for work outlined in the UPWP or any subsequent amendments prior to receiving approval from the department. Any costs incurred prior to receiving department approval shall not be eligible for reimbursement from federal transportation planning funds.
14. Costs incurred by the MPO fiscal agent and staff shall not exceed the total budgeted amount of the UPWP without prior approval of the MPO policy committee and the department. Costs incurred on individual work task shall not exceed that task budget by 25% without approval of the MPO policy committee and the department. If the costs exceed 25%, the UPWP shall be revised, approved by the MPO policy committee and submitted to the department for approval.
15. The MPO policy committee shall not delegate to the MPO staff approval authority of, or subsequent revisions to, the UPWP.
16. Should any conflict be discovered between the terms of this contract and the UPWP, the terms of this contract shall prevail.

Article 5. Additional Work

The MPO fiscal agent is not authorized to request payment for any work it may perform that is not included in the current UPWP. The determination on whether the work is included in the current UPWP remains with the department.

Article 6. 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.
3. The cost has actually been incurred by the MPO policy committee, fiscal agent and staff and meets the following criteria:
 - (a) is verifiable from MPO fiscal agent records;
 - (b) is not included as match funds for any other federally-assisted program;
 - (c) 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 policy committee and fiscal agent. 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 fiscal agent is authorized to submit requests for payment of authorized costs incurred hereunder no more than monthly, no less than quarterly. 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;
 - (c) quantity;

- (d) price;
 - (e) extension; and
 - (f) total
6. The final bill from the previous fiscal year should 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. Total costs paid through December 31 will be used to determine whether the MPO policy committee will contribute to the General Transportation Planning Fund as outlined in the approved allocation formula.
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 7. Reporting

To permit program monitoring and reporting, the MPO policy committee and fiscal agent 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, provided to and used by the MPOs. If task expenditures overrun or under-run a task budget by 25%, the annual performance and expenditure report must include an explanation as to why overrun or under-run occurred.

Article 8. Indemnification

To the extent possible under State law, the MPO policy committee and fiscal agent shall save harmless the department from all claims and liability due to the acts or omissions of the MPO, its agents, or staff. To the extent possible under State law, the MPO policy committee 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 policy committee, its agents, or staff.

Further, to the extent possible under State law, the MPO policy committee and fiscal agent agree 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 or staff member of the MPO policy committee or fiscal agent 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 policy committee and fiscal agent.

Article 9. 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 fiscal agent, staff or a subcontractor, the MPO policy committee and fiscal agent shall provide and 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 fiscal agent 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.

Article 10. 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 11. Disputes

The MPO fiscal agent shall be responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of contract work. The fiscal agent shall pay any costs resulting from a settlement, as determined by the MPO policy committee.

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 Executive Director of the department shall act as referee, and his decision shall be final and binding.

Article 12. Noncollusion

The MPO policy committee and fiscal agent 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 policy committee or fiscal agent breach or violate 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 13. 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 Unified Planning Work Program, 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 policy committee and fiscal agent of its responsibility under this contract.

Article 14. Termination

The department may terminate this contract at any time before the date of completion if the Governor or designee withdraws his designation of the MPO or if it is determined that the MPO policy committee or fiscal agent has failed to comply with the conditions of the contract. The department shall give written notice to the MPO policy committee and fiscal agent at least thirty 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 policy committee and fiscal agent.

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 fiscal agent 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 fiscal agent and staff shall not incur new obligations for the terminated portion after the effective date of termination.

Except with respect to defaults of subcontractors, the MPO policy committee and fiscal agent shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the MPO policy committee, the MPO staff, or the fiscal agent 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 policy committee or fiscal agent.. Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, 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 policy committee or fiscal agent.

Article 15. Remedies

Violation or breach of contract terms by the MPO policy committee or fiscal agent shall be grounds for termination of the contract. Any increased cost arising from the termination shall be paid by the MPO fiscal agent.

This agreement 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 16. Gratuities

Texas Transportation Commission policy mandates that employees of the department shall not accept any benefits, gifts or favors from any person doing business with or who reasonably speaking may do business with the department under this contract.

Any person doing business with or who reasonably speaking may do business with the department under this contract may not make any offer of benefits, gifts or favors to department employees, except as mentioned here above. Failure on the part of the MPO policy committee or fiscal agent to adhere to this policy may result in termination of this contract.

Article 17. Compliance with Laws

The MPO policy committee and fiscal agent 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 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 policy committee and fiscal agent shall furnish the department with satisfactory proof of its compliance therewith.

Article 18. Successors and Assigns

The MPO policy committee or fiscal agent shall not assign or transfer its interest in this agreement without written consent of the department.

Article 19. Debarment/Suspension

The MPO policy committee and fiscal agent are 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 policy committee and fiscal agent 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 20. Equal Employment Opportunity

The MPO policy committee and fiscal agent 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 21. Nondiscrimination

During the performance of this contract, the MPO policy committee and fiscal agent, its assigns and successors in interest, agree as follows:

1. **Compliance with Regulations:** The MPO policy committee and fiscal agent 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 policy committee and fiscal agent, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The MPO policy committee and fiscal agent 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 policy committee or fiscal agent 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 obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The MPO policy committee and fiscal agent 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 MPO policy committee or fiscal agent 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 policy committee and fiscal agent comply, and/or
 - * cancellation, termination, or suspension of the contract in whole or in part

6. **Incorporation of Provisions:** The MPO policy committee and fiscal agent 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 policy committee and fiscal agent 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 22. Nondiscrimination on the Basis of Disability

The MPO policy committee and fiscal agent agree 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 policy committee and fiscal agent 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 23. 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 policy committee and fiscal agent agree to insure that Minority Business Enterprises as defined in 49 CFR 26, 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 policy committee and fiscal agent 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 physically included in 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 24. Procurement

The MPO policy committee and fiscal agent shall maintain 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 policy committee and fiscal agent 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 at 49 CFR 660.

The MPO policy committee and fiscal agent 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 25. Environmental Protection and Energy Efficiency

The MPO policy committee and fiscal agent agree 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 policy committee and fiscal agent further agree to report violations to the Department.

The MPO policy committee and fiscal agent agree 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 26. Property Management

The MPO policy committee and fiscal agent 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 27. Audit

The MPO policy committee and fiscal agent shall comply with the requirements of OMB Circular A-128, "Audit Requirements for State and Local Governments, " and shall promptly furnish the department a copy of each audit report.

The MPO policy committee and fiscal agent 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 28. Control of Drug Use

The MPO policy committee and fiscal agent agree 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 29. 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 policy committee and fiscal agent shall comply with the Special Provision "New Restrictions on Lobbying."

Article 30. Amendments

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

Article 31. Distribution of Products

The MPO policy committee and fiscal agent 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 policy committee, fiscal agent and staff and financed in whole or in part as provided herein. All reports published by the MPO policy committee 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 completion or termination of this contract, all documents prepared by the MPO policy committee, or furnished to the MPO policy committee, fiscal agent and staff 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 32. Legal Construction

In case any one or more of the provisions contained in this agreement 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 agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 33. Prior Agreements

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

Article 34. 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 35. Signatory Warranty

The undersigned signatory for the MPO policy committee and fiscal agent hereby represents and warrants that he is an officer of the MPO policy committee and fiscal agent and that he has full and complete authority to enter into this contact on behalf of the MPO policy committee and fiscal agent.

IN WITNESS WHEREOF, the department, the fiscal agent and the MPO policy committee have caused this contract to be executed, but the contract shall not be valid until signed by a duly authorized representative of each party.

MPO Fiscal Agent

By _____

Title _____

Date _____

MPO Policy committee

By _____

Title _____

Date _____

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 agreement, the following addresses shall be used to mail all required notices, reports, claims, and correspondence:

For the TxDOT Transportation Planning and Programming Division
P.O. Box 149217, Austin, TX 78714-9217

For the TxDOT District Study Office

For the Fiscal Agent of the MPO:

For the Policy Committee of the MPO: