



TITLE VI PROGRAM

Approved by Transportation Policy Board (TPB)
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WWW.ELPASOMPO.ORG
211 N. Florence Street, Suite 202
El Paso, Texas 79901
Phone: 915-212-0258 Fax: 915-212-0257

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TABLE OF CONTENTS

TITLE VI PROGRAM POLICY STATEMENT	4
GENERAL.....	5
INTRODUCTION.....	6
Disadvantaged Business Enterprise (DBE)	6
Organization Responsibilities.....	6
TITLE VI GENERAL RESPONSIBILITIES.....	7
General Program Responsibilities	7
Title VI Coordinator Responsibilities	7
Title VI Liaison's Responsibilities	8
PROGRAM RESPONSIBILITIES.....	8
Public Involvement.....	8
Complaint Procedures.....	11
Planning and Programming.....	14
Environmental Justice Affairs.....	16
Consultant Contracts.....	17
Education and Training	18
EPMPO's FTA 5310 Program Subrecipients	19
APPENDIX 1 - EPMPO Title VI Assurances	21
APPENDIX A.....	25
APPENDIX B.....	27
APPENDIX C.....	28
APPENDIX D.....	29
APPENDIX E.....	30
APPENDIX 2 – EPMPO Organizational Chart of Title VI Responsibilities	31
APPENDIX 3 – Title VI Discrimination Complaint Forms	33
APPENDIX 4 – DBE Memorandum of Understanding between City of El Paso and TXDOT	44
APPENDIX 5 – Form 1273.....	52
APPENDIX 6 – Title VI Investigations, Complaints, and Lawsuits	66
APPENDIX 7 – Non-elected Committees and Councils.....	68
APPENDIX 8 – EPMPO Title VI Public Notice	69
APPENDIX 9 – Demographic Profile of the Metropolitan Area.....	71
APPENDIX 10 – Public Outreach and Involvement Activities and Events	77
APPENDIX 11 – Transportation Policy Board Resolution of Approval	80
APPENDIX 12 – Limited English Proficiency (LEP) Plan	83



TITLE VI PROGRAM AND NON-DISCRIMINATION POLICY STATEMENT

As a recipient of Federal Financial assistance and under Title VI of the Civil Rights Act of 1964 and related statutes, the El Paso Metropolitan Planning Organization (EPMPO) ensures that no person shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any EPMPO programs or activities on the grounds of race, color and national origin, sex, age, or disability.

DECLARACIÓN DE POLÍTICA DEL TÍTULO VI Y NO DISCRIMINACIÓN:

Como beneficiario de asistencia Financiera Federal y según el Título VI de la Ley de Derechos Civiles de 1964 y estatutos relacionados, La Organización de Planeación Metropolitana de El Paso (EPMPO, por sus siglas en Ingles) garantiza que ninguna persona por motivos de raza, color, origen nacional, sexo, edad, y discapacidad será excluida de la participación, o será negado de los beneficios de, o será sujeto a discriminación en cualquiera de los programas o actividades de la EPMPO.

A handwritten signature in blue ink, appearing to read "Eduardo Calvo", is written over a horizontal line.

Eduardo Calvo, Executive Director
(*Director Ejecutivo*)

July 17, 2023

Date (*Fecha*)

EL PASO METROPOLITAN PLANNING ORGANIZATION TITLE VI PROGRAM

Title VI – Nondiscrimination in Federally Assisted Programs Civil Rights Act of 1964 - 42 USC 2000(d)-2000(d)(1)

The Civil Rights Act of 1964 is significant federal legislation that protects civil rights by prohibiting discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. A summary of the text of the Title VI-Nondiscrimination of Civil Rights Act appears below. (To view entire Act, go to www.justice.gov)

GENERAL

This title declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving federal financial assistance and authorizes and directs the appropriate federal departments and agencies to take action to carry out this policy. This title is not intended to apply to foreign assistance programs.

Section 601 – states the general principle that no person in the United States shall be excluded from participation in or otherwise discriminated against on the grounds of race, color, or national origin under any program or activity receiving federal financial assistance.

Section 602 – directs each federal agency administering a program of federal financial assistance by way of grant, contract, or loan to take action pursuant to rule, regulation, or order of general applicability to effectuate the principle of section 601 in a manner consistent with the achievement of the objectives of the statute authorizing the assistance. In seeking the effect compliance with its requirements imposed under this section, an agency is authorized to terminate or to refuse to grant or to continue assistance under a program to any recipient as to whom there has been an express finding pursuant to hearing of a failure to comply with the requirements under that program, and it may also employ any other means authorized by law. However, each agency is directed first to seek compliance with its requirements by voluntary means.

Section 603 - provides that any agency action taken pursuant to section 602 shall be subject to such judicial review as would be available for similar actions by that agency on other grounds. Where the agency action consists of terminating or refusing to grant or to continue financial assistance because of a finding of a failure of the recipient to comply with the agency's judicial review under existing law, judicial review shall nevertheless be available to any person aggrieved as provided in section 10 of the Administrative Procedure Act (5 USC 1009). The section also states explicitly that in the latter situation such agency action shall not be deemed committed to unreviewable agency discretion within the meaning of section 10. The purpose of this provision is to obviate the possible argument that although section 603 provides for review in accordance with section 10, section 10, itself has an exception for action "committed to agency discretion," which might otherwise be carried over into section 603. It is not the purpose of this provision of section 603, however, otherwise to alter the scope of judicial review as presently provided in section 10 (e) of the Administrative Procedure Act.

INTRODUCTION

The Transportation Policy Board (TPB) was established in 1973 to meet the requirement that urbanized areas with a population of 50,000 or greater must have a transportation planning board to ensure that all regional transportation studies are performed in accordance with local governments' desires and in conformance with federal and state laws, rules, and regulations. As defined in 23 Code of Federal Regulations § 450.310 (d), each Metropolitan Planning Organization (MPO) that serves a transportation management area (TMA), shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan planning area, and appropriate State transportation officials. The EPMPO's TPB is comprised of 30 elected and/or appointed public officials from the local governments that have authority for project implementation. Membership in the TPB also includes local and county elected officials, State Senators, and State Representatives. The TPB's sole responsibility is to create and implement regional transportation policy for the MPO, which includes the implementation of Title VI requirements.

EPMPO Staff

The EPMPO staff develops transportation plans and programs that are related to transportation and transportation-related air quality needs. Some of those responsibilities include data collection, maintenance, presentations, geographic information system-based data collection and analysis, and travel demand model development. The staff reports to the Transportation Policy Board for the development of goals and objectives, work plans, and strategies. Public involvement is also EPMPO staff responsibility.

Disadvantaged Business Enterprise (DBE)

The New Mexico Department of Transportation (NMDOT) and Texas Department of Transportation (TXDOT) have adopted Disadvantaged Business Enterprise (DBE) programs in accordance with 49 CFR Part 26. The DBE Program was created to provide a level playing field for small, minority- and women-owned companies wanting to do business with NMDOT, TXDOT and other agencies receiving federal funds from the U.S. Department of Transportation (DOT). The EPMPO as recipients of federal funds for roadway construction projects and design projects are federally required to adhere to this program.

The program states there may not be any discrimination on the basis of race, color, or national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirement of 49 CFR Part 26. All necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts.

Organization Responsibilities

The EPMPO is required by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) to implement Title VI of the Civil Rights Act (42 U.S.C 2000d-1). Title VI declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance, and authorizes and directs the involved Federal departments and agencies to take action to carry out this policy. Title VI prohibits discrimination: whether intentional or where the unintended effect is unduly burdensome.

MPOs are required to research and consider the needs of those generally overlooked by transportation systems, to include but not limited to low income and minority populations*. Low-income communities should be regularly recognized and addressed for impacts, as required by NEPA and 23 U.S.C. 109(h).

TITLE VI GENERAL RESPONSIBILITIES

General Program Responsibilities

The MPO is a primary forum where State DOTs, transit providers, local agencies, and the public can create local transportation plans and programs for the MPO's study area. MPOs are responsible for providing information on Title VI requirements to local public officials and educating on the impacts and progress these requirements may have on local communities. The responsibilities brought forward to MPOs to ensure compliance are:

- Ensuring the long-range Metropolitan Transportation Plan (MTP) and short-range Transportation Improvement Program (TIP) obtains the analytical tools necessary to maintain conformance with Title VI. Analytical tools to assess regional benefits and burdens of transportation systems investments to include Title VI population strategies.
- Identifying low-income and minority population; addressing homes, employment and modes of transportation through reliable data collection. Identifying these populations and their needs in order to address solutions for transportation adversities and distribute investments fairly.
- Ensure fair public involvement processes by eliminating barriers and using tools that engage minority and low-income populations in transportation decision-making.
- Dissemination and access of information related to the Title VI program to all stakeholders to include the public.
- Documentation of Title VI compliance should be available for certification reviews and annual reviews of Title VI programs.
- A process should be followed to resolve any complaints from the public and Title VI issues. Any individual may exercise the right to file a complaint with the EPMPO if a person believes that his or her rights have been exposed to unfair treatment or discrimination. It can be accessed at the EPMPO website: www.elpasompo.org

Title VI Coordinator Responsibilities

The Title VI Coordinator is responsible for directing Title VI implementation, coordination, and monitoring. The Title VI Coordinator is also responsible for:

- Creating an implementation plan for Title VI compliance for the EPMPO.
- Monitoring Title VI activities that include data collection, identifying of Title VI population, assessment tools, submitting documentation, and assuring public involvement.

* Definitions of minority groups can be found at www.census.gov. Low-income guidelines are found at <https://aspe.hhs.gov/poverty-guidelines>

- Maintains role of liaison between stakeholders concerning Title VI issues; assuring that stakeholders are properly informed of Title VI regulations.
- Identify, evaluate, and process Title VI complaints received.
- Implement Title VI public involvement strategies to allow for adequate participation of impacted Title VI populations and address language barriers, if necessary.

To assist the Title VI Coordinator, the Title VI Liaison responsibilities are shared by area of focus: Public Involvement Liaison, Education & Training Liaison, Planning & Programming Liaison, Environmental Affairs Liaison, and Consultant Contracts Liaison.

Title VI Liaison's Responsibilities

The Title VI Liaison (Public Involvement Liaison), under the direction of the Title VI Coordinator, is responsible for the implementation of the Title VI Program. This includes ensuring that the EPMPO is in compliance and maintains compliant with Title VI regulations. This Title VI Liaison is also responsible for monitoring, reporting, and educating staff and the public. The liaison will also maintain any data and documentation associated with Title VI Program.

PROGRAM RESPONSIBILITIES

Public Involvement

The goal for the EPMPO's public involvement plan, Public Participation Plan (PPP), is to ensure the public is notified of all actions concerning Title VI issues in a manner that provides maximum transparency and allows for meaningful participation in the decision-making process. The EPMPO shall seek public comment and review by reaching out to all populations throughout the EPMPO study area, with a particular focus on traditionally underserved groups. The EPMPO will ensure dissemination of all data, documentation, proposals, and alternatives both prior to the point of decision, and then again after formal adoption or disposition.

Operational Guidelines

- EPMPO's Public Participation Plan (PPP)
- EPMPO's Policy for Engaging Individuals with Limited English Proficiency (LEP)

Principles of Public Participation Plan

- Equal access is an essential part of the public involvement process.
- No major policy decision is reached or large project implemented without significantly affecting someone.
- Professionals do not have a monopoly on good solutions.
- Whether or not a project or policy decision is sensible and beneficial, it must be arrived at properly to be acceptable.
- People are much more willing to live with a decision that affects different interests unequally if the decision-making process is open, objective, and considers all viewpoints.

- If project or policy staff doesn't provide all relevant information necessary for an informed decision, the public will rely on, and trust, others.
- Interacting with an official representative of an organization or group is no substitute for interacting directly with that organization or group.
- Effective public notification and participation takes time and effort, and can be expensive, yet is essential to sound decision-making.

The EPMPO is committed to incorporating Environmental Justice elements and Title VI considerations into its Public Participation Plan. During the public participation process, populations that have been traditionally underserved by existing transportation systems, including but not limited to low-income and minority households, are sought out and their needs considered.

Public outreach to traditionally under-served groups is made through contact with community leaders and organizations. In addition, efforts are made to invite them into the transportation planning process, to speak at meetings, and place the identified leaders and organizations on the EPMPO's e-mailing list to receive notifications of meetings, and provide awareness of the EPMPO web-page (www.elpasompo.org) and other relevant information.

To promote the EPMPO's efforts to reach populations affected by transportation projects and/ or policies, the EPMPO also follows the objectives listed below:

- **Promote Respect:** All transportation constituents and the views they promote are respected.
- **Provide Opportunities for Involvement:** Avenues for involvement will be open, meaningful, and organized to let people participate comfortably, considering needs for accessibility, scheduling, location, informational material formats, and language; structured to allow informed, constructive exchanges; promoted in a way that reaches out energetically; and clearly defined in the early stages of document or study development.
- **Be Responsive to Participants:** EPMPO forums will facilitate discussion that corresponds to participants' level of interest and available time. Informational materials should be clear and concise and address participants' questions. Information should be available in sufficient detail to allow residents to form independent views. The results of all public involvement activities will be given full consideration in all EPMPO decision-making. They will be reported in all relevant documents. The EPMPO will also discuss its reasoning in arriving at final decisions in its responses to public comments.
- **Offer Substantive Work:** Public processes will provide participants purposeful opportunities for involvement, allowing useful feedback and guidance. Participants should be encouraged to grapple with the many competing transportation interests, issues, and needs in the EPMPO.
- **Provide a Predictable Process:** The planning process will be understandable and known well in advance. This will make the process more coherent and comprehensive, allowing residents and officials to plan their time and apply their resources effectively.
- **Adopt New Avenues of Communication:** The program will be mindful of the revolution in communications and continue to evaluate new tools to expand the EPMPO's existing methods.
- **Include New and Natural Constituencies:** Efforts to reach new and natural constituencies

include continuing outreach to minority, low income, elderly, youth, and disability communities. There are also organizations and individuals who have a natural interest in transportation and who can provide important information and guidance.

Opportunities for Public Comments

EPMPO offers many opportunities for public comments on EPMPO documents, public meetings, and board meetings.

- **Comments are accepted any time** – Comments are accepted via an online comment form, by phone, fax, email, U.S. mail, or in person during public hearings. Contact information of staff members is provided on the agency website. EPMPO responds to all comments received through public involvement periods.
- **Citizen comments are requested at agency meetings** – All EPMPO board and committee meetings are open to the public. EPMPO generally holds at least 28 meetings per year. The meeting dates are posted in advance on the EPMPO website. The Public can sign up to comment on any agenda item. Public comments may be submitted in writing prior to the meeting to be read in to the record. Comments may also be made during the meetings and are incorporated in the official meeting minutes. All of the EPMPO's boards and committees maintain mailing lists.
- **Formal public comment periods** – Formal public comment and review periods are used to solicit comments on planning and programming activities such as amendments to the TIP, changes to important EPMPO policies (such as the Public Participation Plan), and updates to the current MTP. The comment period is posted on the EPMPO's website home page and press releases are distributed to different media sources and local government agencies. Comments can be made in person at any EPMPO meeting, using a comment form on the EPMPO's website, by email, by US mail. EPMPO responds to all comments received, and forwards comments to other agencies for a response when appropriate. All comments received throughout the comment period are reviewed and responded to.
- **Public Meetings** – EPMPO may hold public meetings during major updates to the region's adopted MTP, amendments to the TIP, and other EPMPO documents.

Strategies for Engaging Individuals with Limited English Proficiency (LEP)

In 2023, EPMPO completed a "four factor analysis," as recommended by the U.S. Department of Justice (DOJ), to determine the number or proportion of LEP persons in the service area who may be served or likely to require EPMPO services.

In an effort to determine the profile of LEP persons in the planning area that may be affected by the transportation planning process and/or beneficiaries of programs, activities, or services; the EPMPO reviewed the U.S. Census American Community Survey 5-year estimate (2016-2020). From total population aged 5 years or older 817,150 within the EPMPO planning area 587,841 speak another language than English. Of those who speak another language than English, 253,113 have limited English proficiency; that is, they speak English "less than very well". From an overall perspective 30.98% of the overall population in the EPMPO planning area.

In the EPMPO planning area, of those persons with limited English proficiency, 248,460 speak Spanish, 1290 speak other Indo-European languages, and 2586 speak Asian and other Pacific Islander Languages.

Strategies for Engaging Tribal Governments

Ysleta Del Sur Pueblo Tribe is a standing member of the Transportation Project Advisory Committee (TPAC). The TPAC reviews and makes recommendations to the TPB on the MTP, TIP, Unified Planning Work Program (UPWP), Congestion Management Process (CMP), project selection process criteria, and special transportation planning studies.

Title VI Public Involvement Liaison's Responsibilities

The Title VI Public Involvement Liaison is responsible for evaluating and monitoring compliance with Title VI requirements in all aspects of the agency's public involvement process. The Liaison will:

- Ensure all communications and public involvement efforts comply with Title VI.
- Develop and distribute information on Title VI and agency programs to the general public.
- Provide information in languages other than English, as needed.
- Disseminate information to minority media and ethnic/gender related organizations, to help ensure all social, economic, and ethnic interest groups in the region are represented in the planning process.
- Include the abbreviated Title VI Notice to the Public in all press releases and on the EPMPO website.
- Notify affected, protected groups of public meetings regarding proposed actions, and make the meetings accessible to all residents. This includes the use of interpreters when requested, or when a strong need for their use has been identified.
- Evaluate and - where necessary - improve their public involvement processes to eliminate participation barriers and engage minority and low-income populations in transportation decision making.

Complaint Procedures

Introduction

As a recipient of federal financial assistance and under Title VI of the Civil Rights Act of 1964 and related Title VI statutes, the EPMPO ensures that no person shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any agency receiving federal financial assistance for programs or activities. All programs funded in whole or in part from federal financial assistance are subject to Title VI requirements. The Civil Rights Restoration Act of 1987 extended this to all programs within an agency that receives federal assistance regardless of the funding source for individual programs.

This policy is intended to establish a procedure under which complaints alleging discrimination in EPMPO's provisions, services, or EPMPO activities can be made by persons who are not employees of EPMPO. Any person who believes EPMPO, or any entity who receives federal financial assistance from or through EPMPO (i.e., sub-recipients, sub-contractors, or sub-grantees), has subjected them or any specific class of individuals to unlawful discrimination may file a complaint of discrimination.

The EPMPO will follow timelines set forth in guidance from the Department of Transportation, the Federal Highway Administration, Federal Transit Administration and the Department of Justice for processing Title VI discrimination complaints.

Filing Period

A complaint of discrimination must be filed within 180 calendar days of the alleged act of Discrimination, or discovery thereof; or where there has been a continuing course of conduct, the date on which that conduct was discontinued. Filing means a written complaint must be postmarked before the expiration of the 180-day period. The filing date is the day you complete, sign, and mail the complaint form. The complaint form and consent/release form must be dated and signed for acceptance. Complaints received more than 180 days after the alleged discrimination will not be processed and will be returned to the complainant with a letter explaining why the complaint could not be processed and alternative agencies to which a report may be made.

Where to File

In order to be processed, signed original complaint forms must be mailed to:

Executive Director/Title VI Coordinator
El Paso Metropolitan Planning Organization
211 N. Florence St., Suite 202
El Paso, TX 79901

Upon request, reasonable accommodations will be made for persons who are unable to complete the complaint form due to disability or Limited-English proficiency. A complaint may also be filed by a representative on behalf of a complainant.

Persons who are not satisfied with the findings of the EPMPO may seek remedy from other applicable state or federal agencies.

Requirements for a Complaint

In order to be processed, a complaint must be in writing and contain the following information (See Appendix 3 for Discrimination Form):

- Name, address, and phone number of the complainant.
- Name(s) and address(es) and business(es)/organization(s) of person(s) who allegedly discriminated.
- Date of alleged discriminatory act(s).
- Basis of complaint (i.e. race, color, national origin).
- A statement of complaint.
- A signed consent release form.

Complaint Review Process

The following is a description of how a discrimination complaint will be handled once received by EPMPO.

1. **A written complaint is received by EPMPO:** Complaints must be in writing and signed by the complainant or their designated representative. If the complainant is unable to complete the form in writing due to disability or Limited-English proficiency, upon request reasonable accommodations will be made to ensure the complaint is received and processed in a timely manner. Complainants wishing to file a complaint that do not have access to the Internet or the ability to pick up a form will be mailed a complaint form to complete. The complainant will be notified if the complaint form is incomplete and asked to furnish the missing information.
2. **Complaint is logged into tracking database:** Completed complaint forms will be logged into the complaint tracking database; basic data will be maintained on each complaint received.
3. **Determine jurisdiction:** EPMPO's Title VI Public Involvement Liaison will complete an initial review of the complaint. The purpose of this review is to determine if the complaint meets basic criteria.

Criteria required for a complete complaint:

- Basis of alleged discrimination (i.e. race, religion, color, national origin, sex, age or disability).
- Determination of timeliness will also be made to ensure that the complaint was filed within the 180-day period requirement.
- The program in which the alleged discrimination occurred will be examined to ensure that the complaint was filed with the appropriate agency. During this process, if a determination was made in which the program or activity that the alleged discrimination occurred is not related to the EPMPO program or activity, every attempt will be made to establish the correct agency. Whenever possible and assuming consent was granted on the Consent/Release form, that is part of the complaint form, the complaint will be forwarded to the appropriate agency.

If the complaint is a transportation related discrimination complaint and the EPMPO or its sub-recipients are named as the respondent, then the complaint, if related to Texas transportation, shall be forwarded to TXDOT, Civil Rights Division, 6230 E Stassney Lane, Austin, Texas, 78744 or if related to New Mexico transportation, to NMDOT Title VI Coordinator, 1570 Pacheco Street, Suite A10, Santa Fe, NM, 87505. Thereafter, the procedures will follow through as indicated here.

4. **Initial written notice to complainant:** Within 10 working days of the receipt of the complaint, EPMPO will send notice to the complainant confirming receipt of the complaint; if needed the notice will request additional information, notify complainant that the activity is not related to an EPMPO program or activity, or does not meet deadline requirements. Conclusions made in step three will determine the appropriate response to the complaint. If any additional information is needed from the complainant, it will be communicated at this point in the process. A copy of the written response, as well as the complaint form, will be forwarded to the to the appropriate DOT for informational purposes only.

5. **Investigation of complaint:** The Public Involvement Liaison will confer with the EPMPO Executive Director to determine the most appropriate fact-finding process to ensure that all available information is collected in an effort to reach the most informed conclusion and resolution of the complaint. The type of investigation techniques used may vary depending on the nature and circumstances of the alleged discrimination. An investigation may include but is not limited to:
 - Internal meetings with EPMPO staff and legal counsel.
 - Consultation with state and federal agencies.
 - Interviews with complainant(s).
 - Review of documentation (i.e. planning, public involvement, and technical program activities).
 - Interviews and review of documentation with other agencies involved.
 - Review of technical analysis method (if applicable).
 - Review of demographic data.
6. **Determination of investigation:** An investigation must be completed within 60 days of receiving the complete complaint, unless the facts and circumstances warrant otherwise. A determination will be made based on information obtained. The Public Involvement Liaison and the Executive Director or designee will render a recommendation for action, including formal and/or informal resolution strategies.
7. **Notification of determination:** Within 10 days of completion of an investigation, the complainant must be notified of the final decision via a written letter authored by the EPMPO Executive Director. This notification will advise the complainant of his/her appeal rights with state and federal agencies if he/she is dissatisfied with the final decision. A copy of this letter, along with the report of findings, will be forwarded to the to the appropriate DOT for information purposes.

Planning and Programming

EPMPO is responsible for developing long and short-range transportation plans to provide efficient transportation services to the EPMPO study area. For these, the EPMPO utilizes a comprehensive transportation planning process, which entails:

- Monitoring and collecting data related to transportation issues
- Coordinating with TXDOT, NMDOT, cities, counties, and transportation providers
- Soliciting public involvement, and
- Providing technical support when needed.

Refer to PPP for a description of how interaction with the public is handled in regards to Planning & Programming.

Key Planning and Programming Activities

EPMPO is mandated by state and federal law to maintain a long-range transportation plan known as a Metropolitan Transportation Plan (MTP). An MTP must be fiscally constrained, multimodal, and

cover a 20-year minimum horizon. The EPMPO is required to update the MTP every four years. EPMPO is also required to maintain a short-range transportation plan known as a Transportation Improvement Program (TIP) (short-range programming). The TIP is a fiscally constrained programming document that covers a four-year horizon period and is required to be updated every four years. However, the EPMPO updates its Texas and New Mexico TIPs every two years. The Annual Listing of Obligated Projects for each fiscal year goes through the 3C planning process and is published on the EPMPO website. This document reflects TIP projects that have demonstrated obligation of federal funding during a specific program year.

EPMPO conducts and supports numerous state and federal planning, compliance, and certification programs, which enable counties, cities, transit agencies, ports-of-entry, NMDOT and TXDOT to obtain state and federal funding. EPMPO also develops and advances a regional Economic Strategy, which is integrated with regional land use and transportation planning. The agency provides forecasts of population, housing, economic, and transportation trends that provide the basis for addressing current issues and exploring future needs and options that could benefit the EPMPO service area.

Consideration of Title VI

Considerations of Title VI legislation are made throughout EPMPO's planning and programming actions, for example:

- **Data collection** – A large part of the agency's work program involves collecting, analyzing, and reporting on data for the EPMPO service area. This includes information on population, housing, employment, poverty, income, wages, transportation, traffic, and growth. Member agencies and other groups use this data for activities such as planning and the distribution of funds.
- **Metropolitan Transportation Plan (MTP)** - The development of the MTP includes environmental justice considerations from the onset. EPMPO set out to ensure that the burdens and benefits of implementing the MTP were equitably distributed across groups based on race, income, age, and disability. EPMPO's analysis included (1) outreach and meaningful participation from minority and low-income population groups in the development of the plan, and (2) an assessment to determine any discrimination of minority and low-income population groups in the distribution of impacts and benefits associated with the projects and programs advanced in the MTP.
- **Transportation Improvement Program (TIP)** – The region's short-term, four-year TIP implements the plan and policies established in the active MTP. Included in the program of projects are federal Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ) Improvement Program, Transportation Alternatives Program (TAP) and FTA formula funds managed by EPMPO. EPMPO's Transportation Policy Board selects projects to receive these funds.

Title VI Planning & Programming Liaison's Responsibilities

The Title VI Liaison is responsible for evaluating and monitoring compliance with Title VI requirements in all aspects of the EPMPO planning process. In addition, the Liaison will:

- Ensure all aspects of the planning and programming process operation comply with Title VI.
- Develop a process for assessing the distributional effects of transportation investments in the region as part of actions on plan and programming documents.

Environmental Justice Affairs

The concept of environmental justice (EJ) includes the identification and assessment of disproportionately high and adverse effects of programs, policies, or activities on minority and low-income population groups. Within the context of regional transportation planning, environmental justice considers the relative distribution of costs and benefits from transportation investment strategies and policies among different segments of society.

When EPMPO adopts new planning documents, or substantively amends existing documents in a manner that requires action by the EPMPO TPB, the sponsoring agency is required to comply with the National Environmental Policy Act (NEPA), and with federal and state environmental justice requirements. When this occurs, a systematic process is used to study and evaluate all necessary environmental aspects of the proposed action(s). Depending on the scope, complexity, and impacts of the project, a NEPA checklist, Determination of Non-significance (DSN), or NEPA Environmental Impact Statement (EIS) will be produced. When one of these documents is required, the agency's Environmental Affairs Liaison (also designated as the NEPA Responsible Official) oversees the process, and ensures all federal and state requirements are met, and that the public has been involved as appropriate. Refer to PPP for a description of how interaction with the public is handled in regards to Environmental Justice.

There are three fundamental environmental justice principles:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
2. To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations that address mobility and added capacity projects.

Title VI Environmental Justice Liaison's Responsibilities

EPMPO is responsible for Title VI environmental justice compliance in all aspects of EPMPO's work that triggers environmental review requirements:

- Enhance their analytical capabilities to ensure that the long-range transportation plan and the TIP comply with Title VI.
- Identify residential, employment, and transportation patterns of low-income and minority populations so that their needs can be identified and addressed, and the benefits and burdens of transportation investments can be fairly distributed.
- Disseminate information to the public on the processes used and findings of the analysis, in accordance with all EPMPO public involvement procedures. This includes dissemination to groups representing minority media and ethnic/gender related organization, and the use of public comment periods and public meetings, interpreters, and materials in other languages, as needed.
- Prepare and update a demographic profile of the region using the most current and appropriate statistical information available on race, income, and other pertinent data. Make the planning document available to the public and member agencies on EPMPO's website.

Consultant Contracts

EPMPO is responsible for selection, negotiation, and administration of its consultant contracts. EPMPO operates under the City of El Paso contract procedures and all relevant federal and state laws.

Contract Procedures

The El Paso Metropolitan Planning Organization contracts with the City of El Paso, Texas for certain fiscal management activities to include consultant and contract procurement. Contract procedures are therefore established by EPMPO and the City of El Paso. EPMPO contracting opportunities are open to all and it is City policy that no person or firm will be discriminated against because of race, color, national origin, sex, or disability in the award of City contracts. Further, contractors shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of City contracts. Where applicable, sub-contracts with the EPMPO having federal funds involved in the funding will be required to contain Standard DOT Title VI Assurances Appendix A and E, and Form 1273.

Regardless of the source of funds or dollar level of purchase, personnel will purchase from State certified Historically Underutilized Businesses (HUBs) to the fullest extent possible and will make a good faith effort to meet State of Texas goals for doing business with HUBs.

Disadvantaged Business Enterprises (DBE) Program and Historically Underutilized Businesses (HUB)

It is the policy of the City, and, thus, the EPMPO, to seek participation in its contracts by local small businesses and by small businesses owned by minorities, women and disadvantaged persons. The City has two strategies for achieving this policy objective - a Disadvantaged Business Enterprise (DBE) program for federally funded contracts and concession contracts and a Historically Underutilized Business (HUB) program for contracts that do not include any federal funds. A copy of the Memorandum of Understanding regarding the adoption of the TXDOT's federally-approved DBE program by the City of El Paso can be found in Appendix 4.

Historically Underutilized Business (HUB) Program

A HUB is a business with its principle place of business in Texas in which the owner(s) have proportionate interest and demonstrate active participation in the business' management and are identified by the State as economically disadvantaged. The HUB program provides bid opportunities to eligible local small business enterprises in EPMPO contracting opportunities that are not funded in part or in whole with federal funds. This program is race and gender neutral. Section 252.0215 of the Local Government Code establishes HUB participation requirements for EPMPO contracting opportunities. The Purchasing Division has designated a Procurement Analyst to act as the HUB Coordinator, who is responsible for ensuring the EPMPO continues its good faith effort to establish business connections with Historically Underutilized Businesses.

Disadvantaged Business Enterprise (DBE) Program

The DBE program implements the Department of Transportation's regulations in 49 CFR Parts 23 (FTA) and 26 (FAA), as amended. It is the policy of the EPMPO to provide opportunities for socially and economically disadvantaged businesses and to encourage their participation in federally funded EPMPO contracts and in other contracts subject to the federal DBE program.

Title VI Consultant Contracts Liaison's DBE Responsibilities

The EPMPO, through the City of El Paso, and TXDOT have entered into a Memorandum of Understanding to memorialize the obligations, expectations, and rights for a DBE program to meet federal requirements. The following are the responsibilities agreed upon by EPMPO and TXDOT:

Include Title VI language in contracts and Requests for Proposals (RFP) and Request for Quotes as described below:

As recipients of federal financial assistance, Local Public Agencies (LPA) must implement a system of procedures and actions prohibiting discrimination, including the required language which must be placed in all contracts and solicitations for bids is as follows:

- RFP and RFQ required language: “The (Title of Recipient), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”
- Executed contract language: The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

Education and Training

Minorities, women, veterans, individuals with a disability, and other individuals protected by Title VI and federal and state anti-discrimination laws are provided with equal opportunity and fair treatment in all employment-related decisions, including opportunities for education and training.

Employee Training

All EPMPO employees are encouraged to participate in professional development and training. Notices received from TXDOT, NMDOT, FHWA and FTA, as well as other agencies, on training and education opportunities are made available to EPMPO employees, which includes information on federally funded training, such as courses provided by National Highway Institute (NHI), Nation Transit Institute (NTI) and FHWA or FTA webinars and workshops.

Title VI Education & Training Liaison's Responsibilities

The Title VI Education & Training Liaison is responsible for evaluating and monitoring compliance with Title VI requirements in all aspects of the education and training program. TXDOT and NMDOT will provide information on training opportunities open to EPMPO staff and sub-recipients, including information on training provided by Federal Highway Administration, Federal Transit Administration, NHI and NTI.

The Liaison will:

- Assist TXDOT/NMDOT and other federal agencies in the distribution of information to staff on training programs regarding Title VI and related statutes.
- Ensure equal access to, and participation in, applicable NHI and NTI courses for EPMPO employees.
- Track staff participation in Title VI training courses and webinars.

EPMPO's FTA 5310 Program Subrecipients

Federal Transit Administration (FTA) Section 5310 Program provides funding to improve mobility for seniors and individuals with disabilities by removing barriers to transportation service and expanding transportation mobility options. The EPMPO is the Designated Recipient for 5310 funds allocated to the El Paso urbanized area. The EPMPO's role includes administering, managing, programming these funds and overseeing the implementation of these projects. The FAST (Fixing America's Surface Transportation) Act requires that projects and programs to be implemented with funding from the 5310 program to be the outcome of a selection process that is fair and equitable.

The EPMPO follows an internal Request for Proposal (RFP) competitive process to ensure funds are programmed in a nondiscriminatory manner. An RFP Announcement for 5310 Programs is first posted on the EPMPO's website and announced in the TPAC and TPB meetings. This announcement is also translated to Spanish and posted in both languages in the local newspapers.

Proposals may be selected based on but not limited to project mobility, effectiveness and benefit to urbanized area, program reach, and population served. Project proposals will be evaluated whether goals, objectives, and/or strategies demonstrated in the Regional Coordinated Transportation Plan are identified or addressed in the proposal and whether proposals include one or more CMP strategies/objectives.

After this review, EPMPO staff forwards the qualified submittals to an ad-hoc committee formed by members of the EPMPO TPAC, who will then provide recommendation for awards to the TPAC after reviewing the submittals. After considering the ad-hoc committee's recommendation, the TPAC then decides on its recommendations to the EPMPO TPB for approval. TPB approved project proposals are included in the EPMPO's MTP and TIP and forwarded for inclusion in the Statewide TIP. The final step is to submit the grant application(s) to the FTA for approval.

Award notifications for the 5310 program are transmitted to those agencies selected. Those agencies that were not recommended for funding are sent letters to inform them of the results of the evaluation

process. Sub-recipients recommended for funding are sent an award notification letter. A Project Grant Agreement (PGA) between EPMPO and the sub-recipient is then prepared for execution. The PGA indicates the date of the grant approval by the FTA and the effective date for project implementation.

Eligible subrecipients of FTA 5310 funds include the following:

- Private nonprofit organization
- Public and private transportation providers
- Tribal Governments
- State or local governmental authority that:
 - Is approved by a state to coordinate services for seniors and individuals with disabilities; or
 - Certifies that there are no nonprofit organizations readily available in the area to provide services.

To be eligible for funding, proposed projects must be located within or a destination within the El Paso urbanized area.

For more information on how the EPMPO administers the FTA 5310 Program funds please refer to EPMPO FTA 5310 Program Management Plan Document available at the EPMPO's website at: www.elpasompo.org/media/FTASection5310/EPMPOFTA5310ProgramManagementPlanDocument.pdf.

Title VI Subrecipient Compliance

Other responsibilities as the designated recipients of 5310 program funds include the monitoring, oversight and review of Title VI Compliance of selected subrecipients which will require subrecipients to:

- Provide FTA Certifications and Assurances signed on a yearly basis
- Provide their adopted Title VI Program prior to execution of agreement
 - This Title VI program will be resubmitted every three years or when program has been updated or when federal guidance requires modification
 - Title VI Program will be reviewed by EPMPO when submitted to ensure all FTA requirements are met by subrecipients. This review will also include oversight of subrecipients website and facilities to ensure Title VI Program, Title VI Public Notice, Title VI Complaint Procedures and Complaint forms are available and accessible for the public
- Attend mandatory Title VI training prior to execution of award
- EPMPO will provide Title VI training and workshops as often as requested by subrecipients to ensure they are complying with all Title VI requirements

The EPMPO will work with subrecipients to ensure Title VI compliance, in the event of a subrecipient's noncompliance, EPMPO may impose sanctions such as the withholding of payments and/or the cancellation, termination, or suspension of a project agreement.

APPENDIX 1 - EPMPO Title VI Assurances

Local Public Agency Title VI Requirements

As recipients of federal financial assistance, LPA's must implement a system of procedures and actions prohibiting discrimination, including:

- The required language which must be placed in all contracts and solicitations for bids is as follows:

RFP required language: "The (Title of Recipient), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

- Executed contract language: The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

(Title VI Assurances start on page below)

The United States Department of Transportation (USDOT)

Standard Title VI/Nondiscrimination Assurances

DOT Order No. 1050.2A

The **El Paso MPO** (herein referred to as the “Recipient”), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- 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);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally-assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally-assisted Department of Transportation programs:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard

to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all Department of Transportation programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*“The **El Paso MPO**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*



3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. The Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, subrecipients, subgrantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, **El Paso MPO** also agrees to comply (and require any subrecipients, subgrantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the USDOT access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the USDOT. You must keep records, reports, and submit the material for review upon request to USDOT, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

El Paso MPO gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under all Department of Transportation programs. This ASSURANCE is binding on Texas, other recipients, subrecipients, subgrantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in all Department of Transportation programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

El Paso MPO

By   Digitally signed by Eduardo Calvo
DN: cn=Eduardo Calvo, o=El Paso
MPO, ou,
email=ecalvo@elpasompo.org, c=US
Date: 2024.04.11 16:10:50 -06'00'

(Signature of Authorized Official)

Dated 04/11/2024

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor 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 its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the (*Title of Recipient*) will accept title to the lands and maintain the project constructed thereon in accordance with all applicable federal statutes, the Regulations for the Administration of all Department of Transportation programs, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Recipient*) all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Recipient*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Recipient*), its successors and assigns.

The (*Title of Recipient*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Recipient*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (***Title of Recipient***) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (***Title of Recipient***) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (***Title of Recipient***) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (***Title of Recipient***) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Recipient*) pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Nondiscrimination covenants, (*Title of Recipient*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Nondiscrimination covenants, (*Title of Recipient*) will there upon revert to and vest in and become the absolute property of (*Title of Recipient*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

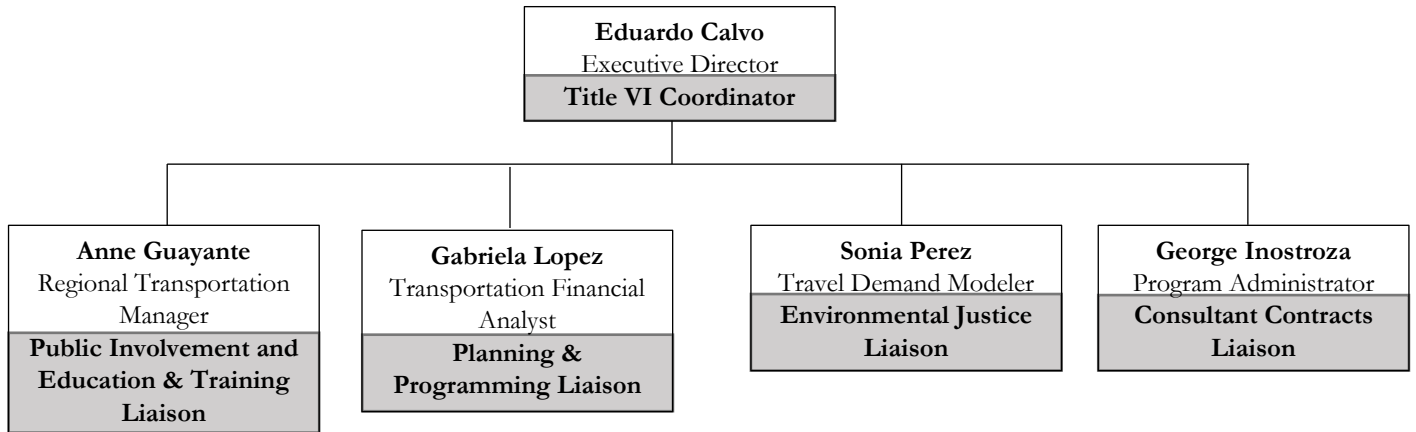
APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

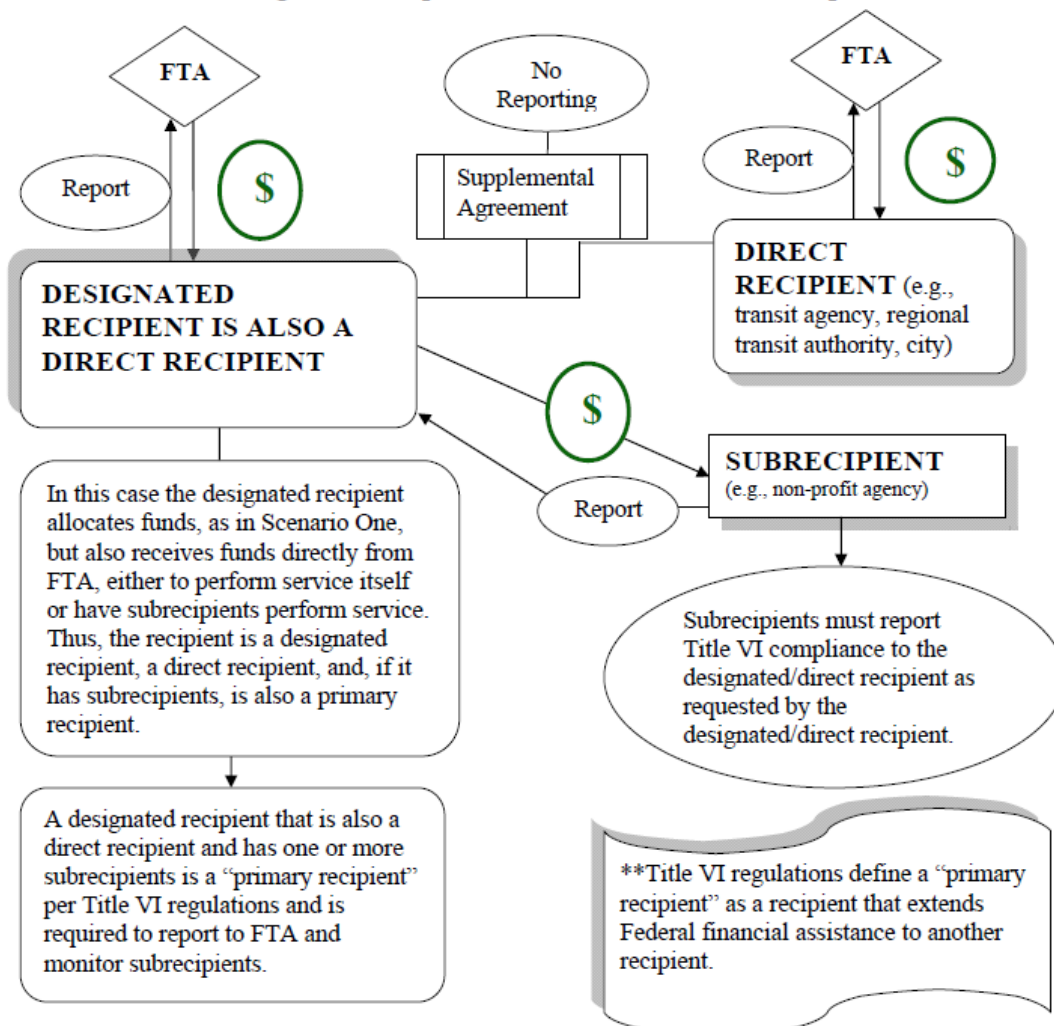
Pertinent Nondiscrimination Authorities:

- 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.
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- 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;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);
- Titles II and III of the Americans with Disabilities Act, which prohibit 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;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination 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;
- 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, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)

APPENDIX 2 – EPMPO Organizational Chart of Title VI Responsibilities



Designated Recipients That Are Also Direct Recipients



Reporting requirements follow the source of Federal funds. In this case, the designated recipient receives funding from FTA; therefore the designated recipient submits a Title VI Program to FTA and includes a description of how it monitors subrecipients. The designated recipient does not collect Title VI Programs from direct recipients to whom it only allocates funds. Direct recipients submit Title VI Programs to FTA.

APPENDIX 3 – Title VI Discrimination Complaint Forms



Title VI Discrimination Complaint Form

Please read the information on the first page of this form carefully before you begin

1. First Name, Middle Initial, Last Name: _____

Street Address: _____

City: _____

State: _____ Zip Code: _____

Phone: _____ Email: _____

2. Who do you believe discriminated against you?

First Name, Middle Initial, Last Name: _____

Name of business/organization: _____

Position/Title: _____

Street Address: _____

City: _____

State: _____ Zip Code: _____

Phone: _____ Email: _____

Person's relationship to you: _____

3. When did the alleged act(s) of discrimination occur? Please list all dates applicable dates mm/dd/yyyy format.

Dates: _____

Is the alleged discrimination on-going? Yes____ No____

- 4. Where did the alleged act(s) of discrimination occur? (Attach additional pages as necessary.)**

Name of location: _____

- 5. Indicate the basis of your grievance of discrimination:**

- ☐ Race
- ☐ National Origin
- ☐ Color

- 6. Describe in detail the specific incident(s) that the basis(es) of the alleged discrimination. Describe each incident of discrimination separately. Attach additional pages as necessary.**

Please explain how other persons or groups were treated differently by the person(s)/agency who discriminated against you.

Please list and describe all documents, e-mails, or other records and materials pertaining to your complaint.

Please list and identify any witness(es) to the incidents or persons who have personal knowledge of information pertaining to your complaint.

Have you previously reported or otherwise complained about this incident or related acts of discrimination? If so, please identify the individual to whom you made the report, the date on which you made the report, and the resolution. Please provide any supporting documentation.

Please provide any additional information about the alleged discrimination.

- 7. If an advisor will be assisting you in the complaint process, please provide his/her name and contact information.**

First Name, Middle Initial, Last Name: _____

Name of business/organization: _____

Position/Title: _____

Street Address: _____

City: _____

State: _____ Zip Code: _____

Phone: _____ Email: _____

- 8. This complaint form must be signed and dated in order to address your allegations. Additionally, this office will need your consent to disclose your name, if needed, in the course of our investigation. The Discrimination Complaint Consent/Release form is attached. If you are filling a complaint of discrimination on behalf of another person, our office will also need this person's consent.**

I certify that to the best of my knowledge the information I have provided is accurate and the events and circumstances are as I have described them. I also understand that if I will be assisted by an advisor, my signature below authorizes the named individual to receive copies of relevant correspondence regarding the complaint and to accompany me during the investigation.

Signature(Firma): _____ Date (Fecha): _____



**Title VI Discrimination Complaint
Consent/Release Form**

Please read the information on the first page of this form carefully before you begin.

First Name, Middle Initial, Last Name: _____

Street Address: _____

City: _____

State: _____ Zip Code: _____

As a complaint, I understand that in the course of an investigation it may become necessary for the El Paso Metropolitan Planning Organization to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of the El Paso Metropolitan Planning Organization to honor requests under the Freedom of Information Act. I understand that as a complainant I am protected from retaliation from having taken action or participated in action to secure right protected by nondiscrimination statutes and regulations which are enforced by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation.

Please check one:

- ☐ I CONSENT and authorize the El Paso Metropolitan Planning Organization (EPMPO), as part of its investigation, to reveal my identity to persons at the organization, business, or institution, which has been identified by me in my formal complaint of discrimination. I also authorize EPMPO to discuss, receive, and review materials and information about me from the same and with appropriate administrators or witnesses for the purpose of investigating this complaint. In doing so, I have read and understand the information at the beginning of this form. I also understand that the material and information received will be used for authorized civil rights compliance activities only. I further understand that I am not required to authorize this release and so so voluntarily.
- ☐ I DENY CONSENT to have the El Paso Metropolitan Planning Organization (EPMPO), reveal my identity to persons at the organization, business, or institution under investigation. I also deny consent to have EPMPO disclose any information contained in the complaint with any witnesses I have mentioned in the complaint. In doing so, I have read and understand the information at the beginning of this form. I further understand that my decision to deny consent may impede this investigation and may result in the unsuccessful resolution of my case.

Signature(Firma): _____ Date (Fecha): _____



Formulario de Queja por Discriminación del Título VI

Lea detenidamente la información en la primera página de este formulario antes de comenzar

1. Nombre, Inicial de segundo nombre, Apellido: _____

Dirección: _____

Ciudad: _____

Estado: _____ Código Postal: _____

Teléfono: _____ Email: _____

2. **¿Quién crees que te discriminó?**

Nombre, Inicial de segundo nombre, Apellido: _____

Nombre de la empresa/organización: _____

Cargo/Título: _____

Dirección: _____

Ciudad: _____

Estado: _____ Código Postal: _____

Teléfono: _____ Email: _____

Relación de la persona con usted: _____

3. **¿Cuándo ocurrió el presunto acto(s) de discriminación?** Por favor, enumere todas las fechas aplicables en el formato mm/dd/yyyy.

Fechas: _____

¿La presunta discriminación continúa? Si _____ No _____

- 4. ¿Dónde ocurrió el presunto acto(s) de discriminación? (Adjunte páginas adicionales según sea necesario.)**

Nombre de la ubicación: _____

- 5. Indique la base de su queja de discriminación:**

- ☐ Raza
- ☐ Origen Nacional
- ☐ Color

- 6. Describa en detalle el incidente(s) específico(s) de la base(s) de la supuesta discriminación. Describa cada incidente de discriminación por separado. Adjunte páginas adicionales según sea necesario.**

Explique cómo otras personas o grupos fueron tratados de manera diferente por la(s) persona(s)/agencia que lo discriminaron.

Enumere y describa todos los documentos, correos electrónicos u otros registros y materiales relacionados con su reclamo.

Indique e identifique cualquier testigo(s) de los incidentes o personas que tengan conocimiento personal de la información relacionada con su queja.

¿Ha denunciado anteriormente este incidente o actos relacionados de discriminación? De ser así, identifique a la persona a la que hizo el informe, la fecha en que realizó el informe y la resolución. Por favor proporcione cualquier documentación de respaldo.

Por favor proporcione información adicional sobre la supuesta discriminación.

- 7. Si un asesor lo asistirá en el proceso de reclamo, favor de proporcionar su nombre e información de contacto.**

Nombre, Inicial de segundo nombre, Apellido: _____

Nombre de la empresa/organización: _____

Cargo/Título: _____

Dirección: _____

Ciudad: _____

Estado: _____ Código Postal: _____

Teléfono: _____ Email: _____

- 8. Este formulario de queja debe estar firmado y fechado para dirigir sus alehatos. Además, esta oficina necesitará su consentimiento para dar a conocer su nombre, si es necesario, en el curso de nuestra investigación. Se adjunta el formulario de Consentimiento/Liberación de quejas por Discriminación. Si está presentando una queja de discriminación en nombre de otra persona, nuestra oficina también necesitará el consentimiento de esta persona.**

Yo certifico según mi conocimiento que la información que he proporcionado es precisa y los eventos y circunstancias son tal como los describí. También entiendo que si me ayudará un asesor, mi firma a continuación autoriza a la persona nombrada a recibir copias de la correspondencia pertinente con respecto a la queja y a acompañarme durante la investigación.

Firma: _____ Fecha: _____



Queja por Discriminación del Título VI

Formulario de Consentimiento/Liberación

Lea la información en la primera página de este formulario antes de comenzar.

Nombre, Inicial de segundo nombre, Apellido: _____

Dirección: _____

Ciudad: _____

Estado: _____ Código Postal: _____

Como queja, entiendo que en el curso de una investigación puede ser necesario que la Organización de Planificación Metropolitana de El Paso revele mi identidad a personas de la organización o institución bajo investigación. I am also aware of the obligations of the El Paso Metropolitan Planning Organization to comply with the requests under the Freedom of Information Act. Entiendo que como demandante estoy protegido de represalias por haber actuado o participado en acciones para garantizar el derecho protegido por leyes y reglamentos de no discriminación que se aplica por la Administración Federal de Carreteras (FHWA) del Departamento de Transporte de EE.UU.

Por favor marque una opción:

- ☐ Yo doy CONSENTIMIENTO y autorizo a la Organización de Planificación Metropolitana de El Paso (EPMPO), como parte de su investigación, a revelar mi identidad a personas de la organización, compañía o institución que he identificado en mi queja formal de discriminación. También autorizo a EPMPO para que reciba y revise materiales e información sobre mí de la misma y con los administradores o testigos apropiados para investigar esta queja. Al hacerlo. He leído y entiendo la información al comienzo de este formulario. También entiendo que el material y la información recibida se usarán solo para actividades autorizadas de cumplimiento de los derechos humanos. Además, entiendo que no estoy obligado a autorizar este lanzamiento, es voluntariamente.
- ☐ Yo NIEGO CONSENTIMIENTO a la Organización de Planificación Metropolitana de El Paso (EPMPO), a revelar mi identidad a personas de la organización, compañía o institución que he identificado bajo investigación. También yo NO autorizo a EPMPO para que reciba y revise materiales e información sobre mí de la misma y con los administradores o testigos apropiados para investigar esta queja. Al hacerlo. He leído y entiendo la información al comienzo de este formulario. Además, entiendo que mi decisión de negar mi consentimiento puede impedir esta investigación y puede dar como resultado la resolución infructuosa de mi caso.

Firma: _____ Fecha: _____

**APPENDIX 4 – DBE Memorandum of Understanding between City of El Paso and
TXDOT**

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Memorandum of Understanding (MOU) Regarding the Adoption of the Texas Department of Transportation's (TxDOT) Federally-Approved Disadvantaged Business Enterprise Program (DBE) by the City between the City of El Paso and the Texas Department of Transportation. TxDOT requires the City to enter into this MOU in order for the City to receive Federal Highway Administration funding through TxDOT for City construction projects. TxDOT provides the certification of DBE participants and the City provides TxDOT with data showing compliance with the TxDOT DBE program under this MOU.

ADOPTED this 9th day of November, 2010.



THE CITY OF EL PASO

John Cook
John Cook
Mayor

ATTEST:

Richarda Duffy Momser
Richarda Duffy Momser
City Clerk

APPROVED AS TO FORM:

for Mark Shoesmith
Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert
R. Alan Shubert, P.E.
City Engineer

CITY CLERK'S OFFICE

**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM BY THE CITY OF EL PASO**

This Memorandum of Understanding is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")**, an agency of the State of Texas; and the **CITY OF EL PASO**, a political subdivision of the State of Texas.

Whereas, from time to time the City of El Paso receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the City of El Paso with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, the City of El Paso, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises ("DBEs"), as defined by 49 CFR 26 ("DBE Program"); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of the City of El Paso's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, the City of El Paso and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, the City of El Paso desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the City of El Paso find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the City of El Paso's adoption of the TxDOT DBE Program to meet the federal requirements;

Now, therefore, TxDOT and the City of El Paso in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The City of El Paso is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The City of El Paso receives its federal assistance through TxDOT. As a sub-recipient, the City of El Paso has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as the City of El Paso, adopt the DBE program, administered through TxDOT, and the City of El Paso by its prescribed protocol adopted the TxDOT DBE Program on November 9, 2010.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the City of El Paso to achieve its DBE participation in federally assisted Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the City of El Paso and for TxDOT.

(5) The City of El Paso and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the City of El Paso:

(a) The City of El Paso will be responsible for project monitoring and data reporting to TxDOT. The City of El Paso will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, to the City of El Paso.

(b) The City of El Paso will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The City of El Paso's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The City of El Paso and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with the City of El Paso in an effort to meet the timing and other requirements of the City of El Paso projects.

(d) The City of El Paso will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on the City of El Paso construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) The City of El Paso will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. The City of El Paso and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. The City of El Paso shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. The City of El Paso will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement
Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

- (g) The City of El Paso will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding the City of El Paso's administration of the DBE Program through TxDOT.
- (h) The City of El Paso will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.
- (i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The City of El Paso and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the City of El Paso area.
- (j) The City of El Paso will submit DBE semi-annual progress reports to TxDOT.
- (k) The City of El Paso will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the City of El Paso projects in the DBE Education and Outreach Programs.
- (l) The Executive Director of the City of El Paso will implement all federal requirements , including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.
- (m) In accordance with 23 CFR 200.1, the City of El Paso shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in , and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's OCR.
- (n) The City of El Paso will comply with 49 CFR 26.29 as stated in Attachment F.
- (6) In the event there is a disagreement between TxDOT and the City of El Paso about the implementation of the TxDOT DBE Program by the City of El Paso the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by the City of El Paso can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.
- (7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the City of El Paso will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.

(9) This Memorandum of Understanding applies only to projects for which the City of El Paso is a sub-recipient of federal funds through TxDOT. The City of El Paso may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. The City of El Paso may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this Memorandum of Understanding are also incorporated as if fully set out herein for all purposes:

Attachment A - FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973);

Attachment B - SPECIAL PROVISION – 000-1966

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D -- DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

Attachment F 1 – DBE Regulations: 49 CFR Part 26

Attachment F 2 – DBE Special Provisions 000-1966

Attachment F 3 – TxDOT's Organizational Chart

Attachment F 4 – Measurement and Payment Special Provision 009-007

Attachment F 5 – Texas Unified Certification Program (TUCP) DBE directory example and website address to the directory

Attachment F 6 – DBE Goal Methodology

Attachment F 7 – DBE Bidder Certification

Attachment F 8 – DBE Joint Check Approval Form

Attachment F 9 – TUCP Standard Operating Procedures (SOP)

Attachment F 10 – TUCP Memorandum of Agreement (MOA)

Attachment F 11 – Forms list

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this Memorandum of Understanding shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

CITY OF EL PASO

R. Alan Shubert, P.E.
City Engineer

Hand Delivery:

2 Civic Center Plaza, 4th Floor
El Paso, TX 79901

Registered or Certified Mail (Return receipt requested):

City of El Paso
2 Civic Center Plaza, 4th Floor
El Paso, TX 79901

TEXAS DEPARTMENT OF TRANSPORTATION
DBE Liaison
Office of Civil Rights
Address: 125 E. 11th Street
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This Memorandum of Understanding may be modified or amended only by written instrument, signed by both the City of El Paso and the Texas Department of Transportation and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however, the City of El Paso and TxDOT may mutually agree to terminate this Memorandum of Understanding.

(14) The following provisions apply in regard to construction of this MOU:

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

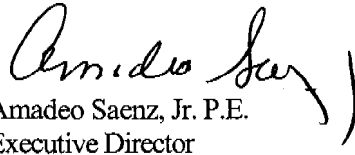
(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or national holiday, or state or county holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

(15) This Memorandum of Understanding shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

EXECUTED in triplicate originals by TxDOT and the City of El Paso, acting through each duly authorized official and effective on the latest date signed.


The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

By: 
Amadeo Saenz, Jr. P.E.
Executive Director

Date: 12/2/10

CITY OF EL PASO

By: 
John F. Cook
Mayor

Date: 11/9/2010

APPENDIX 5 – Form 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor 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 contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages.

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

APPENDIX 6 – Title VI Investigations, Complaints, and Lawsuits

The EPMPO maintains a log of Title VI complaints, however, has received none. The EPMPO has also not taken part in any Title VI investigations, complaints, or lawsuits, including apropos of transit programs and/or services.

Title VI Complaint Log

[illegible]

APPENDIX 7 – Non-elected Committees and Councils

The EPMPO has only one committee that supports the Transportation Policy Board (TPB) and does not elect members. The Transportation Project Advisory Committee (TPAC) is composed of sixteen (16) voting members. Members are selected by the governing bodies represented on the TPB and include a major public university and a federally recognized Native American tribe and sovereign nation.

TEXAS

- Town of Anthony
- City of El Paso
- Mass Transit Board
- Town of Clint
- Horizon City
- City of Socorro
- Village of Vinton
- City of San Elizario
- El Paso County
- Texas Department of Transportation
- Ysleta del Sur Pueblo
- University of Texas at El Paso

NEW MEXICO

- City of Anthony
- City of Sunland Park
- Doña Ana County
- New Mexico Department of Transportation

Additionally, the EPMPO coordinates with representatives and agencies situated throughout the El Paso, TX/southern New Mexico region and in the southern neighboring nation of the Republic of Mexico, the state of Chihuahua, Mexico, and the city of Juarez, Chihuahua, Mexico, to assist in the process of continuous, cooperative, and comprehensive regional planning on both sides of the border. During this process, EPMPO staff is selected to serve on various committees and/or councils whose membership varies. Moreover,

EPMPO staff are continuous and active participants of the Far West Texas/El Paso Regional Transportation Coordination Committee (WTET) and assists in the development of the six-county region's health and human services transportation coordination plan. Those six (6) counties include Brewster, Culberson, El Paso, Jeff Davis, Hudspeth, and Presidio. WTET's intent is to eliminate waste in the provision of public transportation services, generate efficiencies that will permit increased levels of service and further the state's efforts to reduce air pollution. The coordination of these many public transportation services is a common sense approach to aligning limited public resources in a way that addresses the region's mobility priorities while minimizing duplication and providing a structure for collaboration among transit providers. Membership consists of staff from regional, federal, state, and municipal governing agencies, municipal transit providers, health and human transportation service providers, health and home care agencies, support groups, and regional residents.

APPENDIX 8 – EPMPO Title VI Public Notice

The El Paso Metropolitan Planning Organization (EPMPO) Title VI Notice to the public is available at the EPMPO website (www.elpasompo.org/TitleVI) in English and Spanish. This notice has been posted in the receiving area of the EPMPO Office (211 N. Florence Ave. Suite 202, El Paso, TX 79901) and displayed when logistics allow at public meetings.



TITLE VI

NOTICE TO THE PUBLIC

The El Paso Metropolitan Planning Organization (EPMPO), as a recipient of Federal Financial assistance and under Title VI of the Civil Rights Act of 1964, ensures that no person shall on the grounds of race, color and national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any EPMPO programs or activities.

Any person who believes they have been harmed by an unlawful discriminatory practice regarding EPMPO's programs has a right to file a formal complaint with the EPMPO. Any such complaint must be in writing and submitted to the EPMPO Executive Director/Title VI Coordinator within one hundred eighty (180) days following the date of the alleged occurrence. A Title VI complaint form is available at the EPMPO website: www.elpasompo.org/TitleVI

For more information on the EPMPO Title VI program and guidance to file a complaint please contact Eduardo Calvo, Executive Director and Title VI Coordinator at (915) 211-0258 or visit the EPMPO offices at 211 N. Florence St. Suite 202, El Paso, Texas 79901.

TITULO VI

AVISO AL PUBLICO

La Organización de Planeación Metropolitana de El Paso (EPMPO por sus siglas en Ingles), como beneficiario de asistencia Financiera Federal y según el Título VI de la Ley de Derechos Civiles de 1964, garantiza que ninguna persona por motivos de raza, color y origen nacional, será excluida de la participación, o será negado de los beneficios de, o será sujeto a discriminación en cualquiera de los programas o actividades de la EPMPO.

Cualquier persona que crea haber sido sujeto de una práctica ilegal discriminatoria en cuanto a los programas de EPMPO, tiene el derecho de presentar una queja formal a EPMPO. Cualquier denuncia debe ser hecha por escrito y presentada al Director Ejecutivo/Coordinador del Título VI de EPMPO dentro de ciento ochenta (180) días siguientes a la fecha del acontecimiento. El formulario de queja por discriminación del Título VI se encuentra disponible en la página web de EPMPO: www.elpasompo.org/TitleVI

Para más información del Programa del Título VI del EPMPO y orientación para presentar una queja por favor contacte a Eduardo Calvo, Director Ejecutivo y Coordinador del Título VI al (915) 212-0258 o visite las oficinas del EPMPO en 211 N. Florence St. Oficina 202, El Paso, Texas, 79901

APPENDIX 9 – Demographic Profile of the Metropolitan Area

The Metropolitan Planning Area of EPMPO is composed of El Paso County, Texas and portions of Otero and Doña Ana County in New Mexico. Socio-economic indicators for the EPMPO area are presented in the table below.

Executive Order 12989 defines Environmental Justice populations as low-income and minority groups. This rule states that federally funded agencies must identify and address disproportionately high and adverse impacts of their programs, policies, and activities on Environmental Justice populations. To identify these populations, the Environmental Justice Index was determined for low-income and minority population for 2020 and is illustrated in a series of maps.

	2020	Percent of Total Population
Total Population	896,769	
Total Minority Population ^a	793,411	88.47%
Black or African American	24,588	2.74%
American Indian or Alaska Native	2,513	0.28%
Asian	9,598	1.07%
Native Hawaiian or Other Pacific Islander	1,178	0.13%
Hispanic or Latino	745,628	83.15%
Some Other Race Alone	631	0.07%
Two or More Races	9,275	1.03%
White (Non-Hispanic)	103,358	11.53
Total Population for Whom Poverty Status is determined	879,148	
Low Income Population ^b	179,406	20.41%

a Minority includes population who identify their race as any race other than white, or who identify their ethnicity as Hispanic or Latino. Table B03002

b Low income population includes individuals whose income is below the poverty percent. Table B17021

Source: 2020 American Community Survey 5-Year Estimates. ACS data are based on a sample and are subject to sampling variability

Environmental Justice Index is a method¹ to identify Environmental Justice populations using demographic data at the Census block group level. A Census block group is considered to have a high concentration when the block group percentage for the socio-economic indicator exceeds the regional percentage. The Environmental Justice Index map is meant to identify where further analysis is needed and is not meant to act as the analysis itself. Data for the index is based on American Community Survey 5-year estimates.

¹ This method has been used by several MPOs including NCTCOG and H-GAC to satisfy FTA requirements.

Environmental Justice Index Variables

Total Minority Populations

The Total Minority variable describes the percentage of Total Minority persons in the block group. Racial or ethnic minority groups that are included in the Total Minority variable for the Environmental Justice Index (EJI) include:

- American Indian or Alaska Native Race
- Asian Race
- Black or African American Race
- Hispanic or Latino Ethnicity
- Native Hawaiian or Other Pacific Islander Race
- Some Other Race (non-White)
- Two or More Races (could include white)

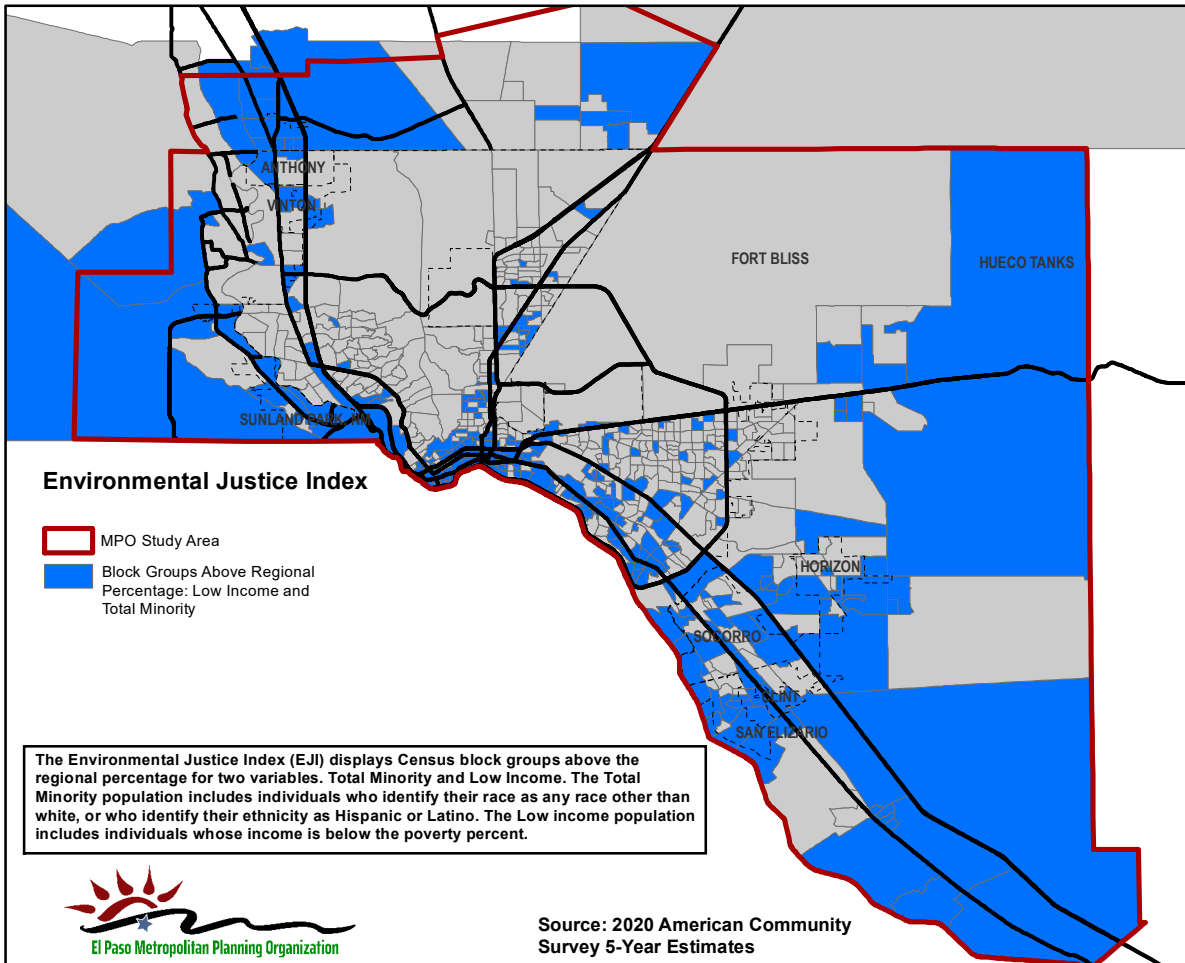
Total Minority is the sum of the number of individuals who are Hispanic or Latino and the number of non-Hispanic non-Latino individuals who identify as one of the above minority race categories. This prevents double-counting of Hispanics or Latinos who also identified themselves as a race or races other than white. Each block group is displayed as either above or below/equal to the regional percentage for Total Minority. The EPMPO region is a “majority minority region”. Hispanic/Latino residents are the most numerous racial/ethnic group in the EPMPO area with 83.15%. The regional percentage for Total Minority is 88.47%.

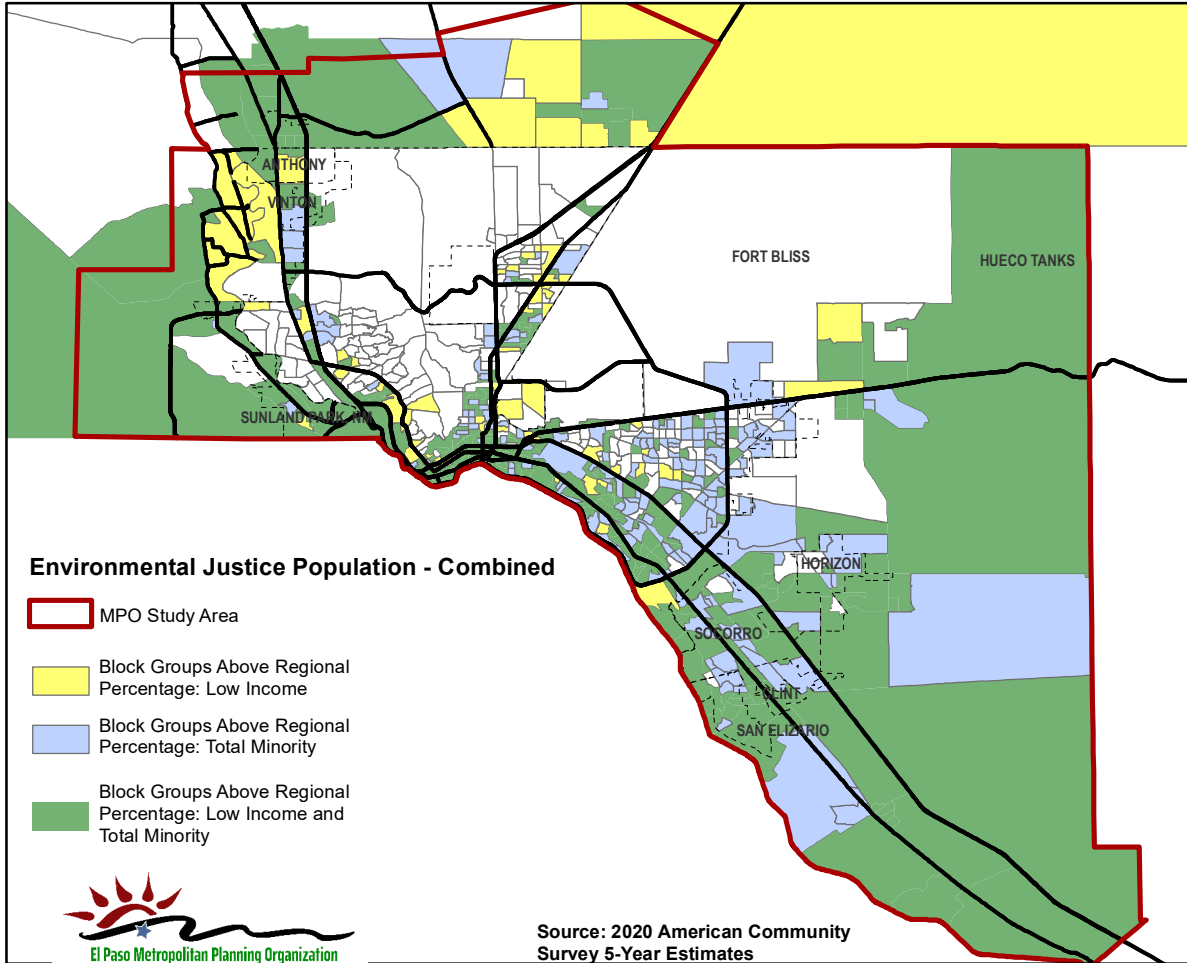
Low-Income Populations

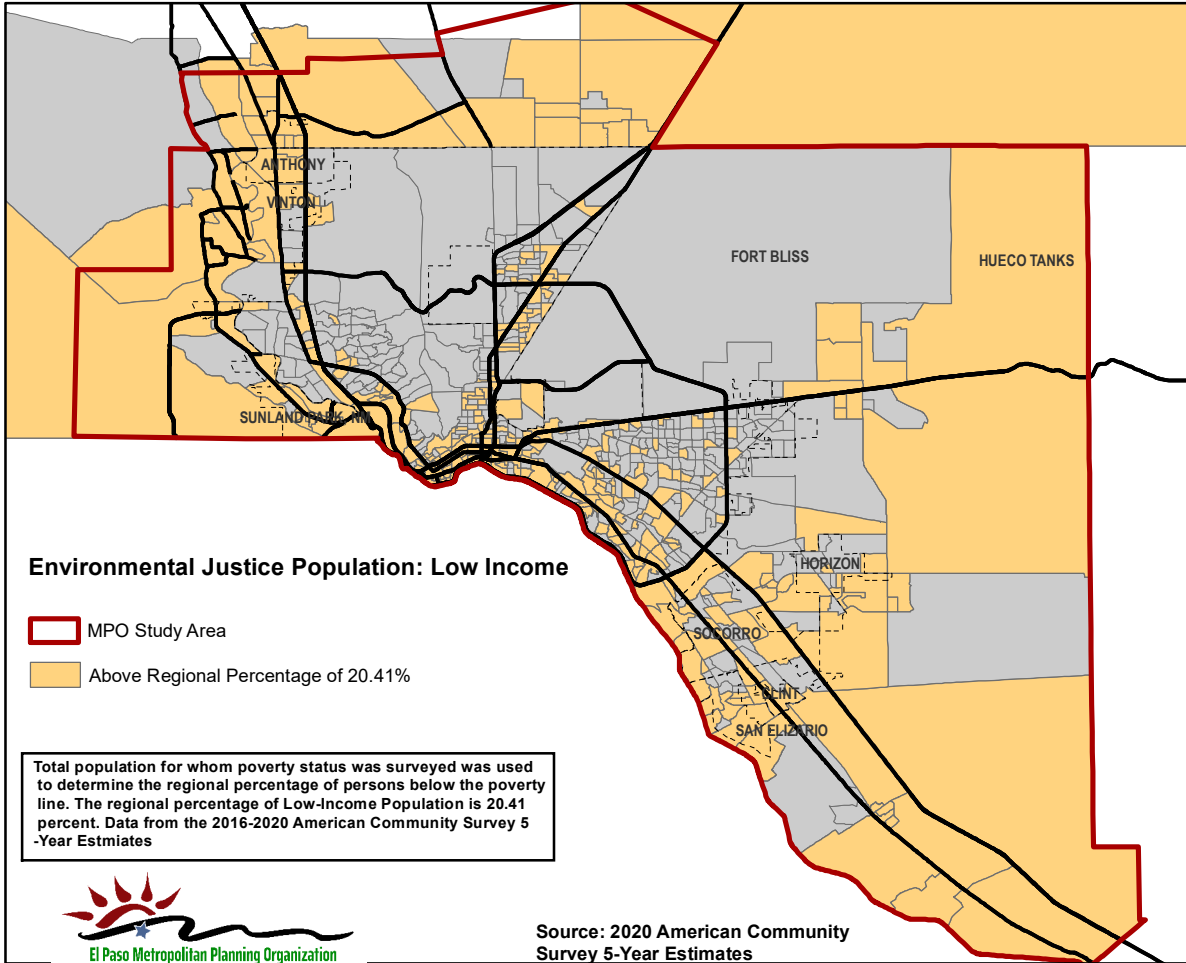
The regional percentage of persons below the poverty level for EPMPO area is 20.41%. Low-income populations are the individuals identified below the poverty level as determined by The Census Bureau. The Census Bureau uses a set of money income thresholds that vary by family size and composition to determine who is in poverty. If a family’s total income is less than the family’s threshold, then that family and every individual in it is considered in poverty. For more information, please refer to the section “How the Census Bureau Measures Poverty” at the following link below: <https://www.census.gov/topics/income-poverty/poverty/about.html>

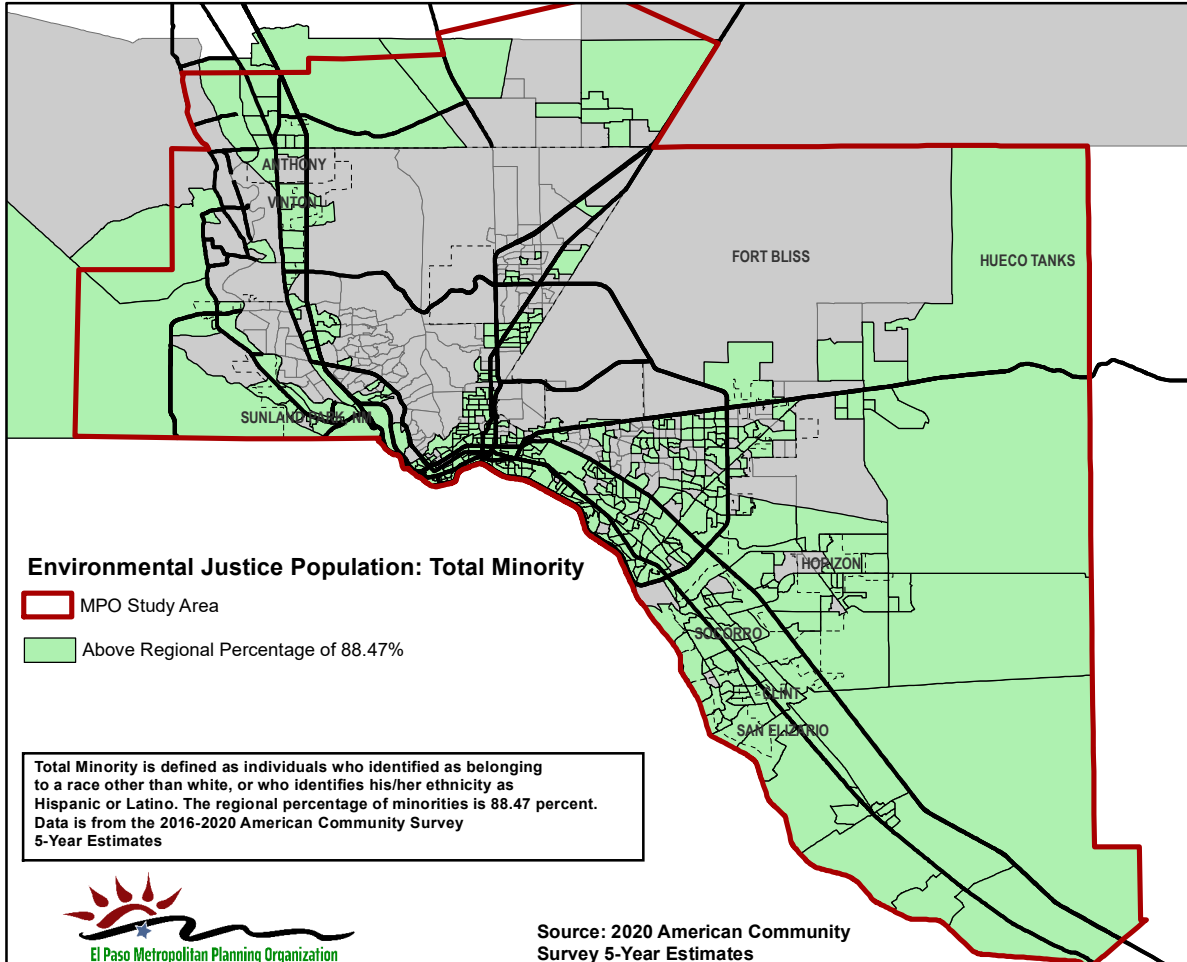
The Environmental Justice Index was designed to represent block groups above the regional percentage for one or both EJ variables. The Environmental Justice Index map presents the regional percentage for both EJ variables.

For the combined map, block groups displayed as either yellow, blue or green are above the regional percentage of low income individuals, total minority populations, or both, respectively.









APPENDIX 10 – Public Outreach and Involvement Activities and Events

- **RMS 2050 MTP Visioning Workshops**

- **Comment Period:** 06/14/2020 – 07/19/2020
- EPMPO conducted an on-demand online visioning workshop which was made available at the EPMPO website along with a downloadable and printable survey that could be submitted through postal mail. A summary of public feedback was presented to the TPB after the workshop ended. Appendix E of the RMS 2050 MTP documents the Public Feedback Report for the responses received at the visioning workshops. This document available in the following EPMPO website:
https://www.elpasompo.org/media/MTP/RMS2050MTP/FinalMTP_4Nov22/Appendix%20E-Online%20Visioning%20Workshop%20-%20Public%20Feedback%20Report.pdf

- **45-day Public Comment Period for the Public Participation Plan**

- **Comment Period:** 07/19/2020 - 09/02/2020
- **Approved by TPB:** [09/18/2020](#)
- **No comments received from the Public**
- Newspaper announcement for 45-day public comment and virtual public meeting published on El Paso Times 07/19/2020. Announcement was posted both in English and Spanish
- Virtual Informational Public Meeting conducted 08/19/2020 5:30-7:00 PM MST via WebEx Link to the virtual public meeting was made available at the EPMPO website and Facebook page
- PPP was made available in the EPMPO website for public comment

- **On-road Mobile Source Emissions Reports: TX and NM**

- **Comment Period:** 08/18/2020 – 09/18/2020
- **Approved by TPB:** [09/18/2020](#)
- **No comments received from the Public**

Announcement was posted on the EPMPO website to invite the public to comment on the Draft Midpoint Reports and Update to 4-year On-road Mobile Source Emissions Target for the Texas and New Mexico portions of the EPMPO planning area. The TPB approve the Midpoint Performance Period On-road Mobile Source Emissions Targets for Carbon Monoxide (CO) at 841.62 kg/day and Particulate Matter less than or equal to 10 microns (PM-10) at 21.96 kg/ day for the Texas portion of the EPMPO planning area and PM-10 at 3.48 kg/day for the New Mexico portion of the EPMPO planning area.

- **30-day Public Comment Period for the FFY 2022-2023 Unified Planning Work Program (UPWP)**

- **Comment Period:** 05/03/2021 - 06/03/2021
- **Approved by TPB:** [06/25/2021](#)
- **No comments received from the Public**

- Newspaper announcement for 30-day public comment and virtual public meeting published on El Paso Times 05/02/2021. Announcement was posted both in English and Spanish
- Virtual Public Meetings conducted 05/12/2021 5:30-6:30 PM MT and 05/25/2021 from 4:00-5:00 PM MT via Teams. Link to the virtual public meeting was made available at the EPMPO website and Facebook page
- UPWP was made available in the EPMPO website for public comment
- **45-day Public Comment Period for the Public Participation Plan (PPP)**
 - **Comment Period:** 07/06/2021 – 08/20/2021
 - **Approved by TPB:** [09/17/2021](#)
 - **No comments received from the public; however, comments were received from NMDOT. These comments were addressed and taken in consideration. Detailed comments and responses are available in the EPMPO website:**
<https://www.elpasompo.org/media/TransportationPolicyBoard/Agendas/Items/2021/September/Item%204-.pdf>
 - Newspaper announcement for 30-day public comment and virtual public meeting published on El Paso Times 07/04/2021. Announcement was posted both in English and Spanish
 - Virtual Public Meetings conducted 07/21/2021 5:30-6:30 PM MT and 08/11/2021 from 4:00-5:00 PM MT via Teams. Links to the virtual public meeting were made available at the EPMPO website and Facebook page
 - PPP was made available in the EPMPO website for public comment
- **45-day Public Comment Period for the Regional Mobility Strategy (RMS) 2050 Metropolitan Transportation Plan (MTP), Transportation Conformity Report, and RMS 2023-2026 Transportation Improvement Program (TIP)**
 - **Comment Period:** 01/24/2022 – 03/09/2022
 - **Adopted by TPB:** [03/25/2022](#)
 - **All comments submitted by the public and EPMPO response are available in the EPMPO website:**
https://www.elpasompo.org/media/MTP/RMS2050MTP/FinalMTP_4Nov22/Appendix%20A-Public%20Comment.pdf
 - Newspaper announcement for 30-day public comment and virtual public meeting published on El Paso Times 01/25/2022. This announcement was posted both in English and Spanish. Additionally physical flyers were distributed throughout the EPMPO Planning Area with an emphasis on Environmental Justice (EJ) areas.
 - The EPMPO conducted four public meetings to present the documents:
 - Thursday, February 3rd, 6-8 p.m. @ 211 N. Florence St. & via Microsoft Teams
 - Wednesday, February 9th, 11 a.m.-1 p.m. via Microsoft Teams
 - Tuesday, February 15th, 3-5 p.m. via Microsoft Teams
 - Link to the virtual public meeting was made available at the EPMPO website and Social Media pages. Additionally, recording of the public meeting presentation was

made available for viewing on demand at the EPMPO website. This presentation was provided in both English and Spanish.

- RMS 2050 MTP, Transportation Conformity Report and RMS 2023-2026 TIP documents were made available in the EPMPO website for public comment.
- The EPMPO received several comments requesting to extend to comment period to allow for additional time to review documents. In response to this request, the EPMPO extended the public comment period to 45 days. Announcement of the extension was posted in the EPMPO website and social media pages, a mass email announcement was distributed to all EPMPO's mailing lists.

- **15-day Public Comment Period for the 2nd Performance Period Report for CMAQ Traffic Congestion and On-road Mobile Source Emissions Targets**

- **Comment Period:** 07/08/2022 – 07/22/2022
- **Adopted by the TPB:** [08/18/2022](#)
- **No comments received from the public**
- Newspaper announcement for 15-day public comment and virtual public meeting published on El Paso Times 07/03/2022. Announcement was posted both in English and Spanish
- Virtual Public Meetings conducted 07/14/2021 5:30-6:30 PM MT via Teams. Link to the virtual public meeting was made available at the EPMPO website and Social Media pages
- Report was made available in the EPMPO for public comment

APPENDIX 11 – Transportation Policy Board Resolution of Approval

The EPMPO Title VI Program was approved by the Transportation Policy Board 03/24/2023

RESOLUTION NO. MPO 2023 – 03

By the El Paso Metropolitan Planning Organization Transportation Policy Board

WHEREAS, the El Paso Metropolitan Planning Organization is the duly designated Metropolitan Planning Organization (“EPMPO”) for the El Paso Urbanized Transportation Study Area; and

WHEREAS, the Transportation Policy Board (“TPB”) is the policy-making body responsible for establishing regional transportation planning policies for the El Paso Urbanized Transportation Study Area; and

WHEREAS, THE TPB Chairperson shall be the chief administrative officer of the TPB and will preside over each meeting of the TPB, and have execution authority on all MPO policy documents after TPB action; and

WHEREAS, a regular meeting of the TPB was held on March 24, 2023, at 9:00 a.m., at the Blue Flame Building, 304 Texas Avenue, El Paso, TX 79901, 17th Floor (Center for Community Engagement); and

WHEREAS, a Notice of Meeting and Agenda of the EPMPO TPB for the March 24, 2023 meeting was duly and properly posted pursuant to the requirements of the Texas Open Meetings Act; and

WHEREAS, a majority of the TPB was present and constituted a quorum; and

WHEREAS, a majority of the TPB quorum present at the meeting on March 24, 2023, considered, discussed, and voted in favor of approving and passing Agenda Items No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

NOW, THEREFORE, BE IT RESOLVED, BY THE TPB THAT: The following action items are consistent with the EPMPO’s regional transportation planning policies for the El Paso Urbanized Transportation Study Area and are passed and approved by the TPB and become effective March 24, 2023:

1. Approved the minutes of the February 17, 2023 EPMPO TPB meeting.
2. **Approved the El Paso MPO Title VI Program**
3. Approved the amendments to the Federal Fiscal Year (FFY) 2022-2023 Unified Planning Work Program (UPWP) to detail efforts to develop a Safety Action Plan for the El Paso MPO region.
4. Approved the amendments to the Regional Mobility Strategy (RMS) 2050 Metropolitan Transportation Plan (MTP), and RMS 2023-2026 Transportations Improvement Program (TIP) to amend the *South Central Regional Transit District (SCRTD) Electric Buses*


Acquisition project by increasing the amount of New Mexico Congestion Mitigation Air Quality Improvement (CMAQ) Mandatory program funds and adding New Mexico CMAQ Flex funds in FY 2023.

5. Approved the Legal Services Agreement with Kemp Smith LLP.
6. Authorize the Executive Director to sign letters of support for the City of El Paso's Community Project Funding requests through the offices of United States Representatives Veronica Escobar and Tony Gonzalez.
 - a. Ysleta Port of Entry Feasibility Study
 - b. Sun Metro Micro Transit Project
 - c. El Paso International Airport (EPIA) Terminal Drive Bridge Improvements
7. Authorize the Executive Director to sign a letter of support for the El Paso Chamber's request to the 16th Congressional District Community Project funds for the El Paso Region Ports of Entry Development Study and Operation Plan.
8. Adopt a resolution in support of the Paso del Norte (PDN) Trail Project.
9. Authorized the Executive Director to submit a letter of support for Madhu Venugopal's nomination for the Senior Researcher Award at Texas A&M Transportation Institute (TTI).
10. Approved Task Order No. 6 pursuant to the terms and conditions of the Master Agreement with Texas A&M Transportation Institute (TTI) to provide training to MPO staff on safety related issues and training sessions for the Transportation Policy Board and MPO staff in Fiscal Years 2023 and 2024 in an amount not to exceed \$25,000.00.

APPROVED AND ENTERED THIS 24th DAY OF MARCH 2023.


Ricardo Samaniego
Transportation Policy Board Chairperson

APPROVED AS TO FORM:


Sergio M. Estrada, General Counsel
El Paso Metropolitan Planning Organization

APPROVED AS TO CONTENT:


Eduardo Calvo, Executive Director
El Paso Metropolitan Planning Organization

APPENDIX 12 – Limited English Proficiency (LEP) Plan



LIMITED ENGLISH PROFICIENCY (LEP) PLAN

INTRODUCTION

This *Limited English Proficiency Plan* has been prepared to address the El Paso Metropolitan Planning Organization's (EPMPO) responsibilities as a recipient of federal financial assistance as they relate to the needs of limited English proficient individuals. The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq, and its implementing regulations, which state that no person shall be subjected to discrimination on the basis of race, color, or national origin.

Executive Order 13166, titled *Improving Access to Services for Persons with Limited English Proficiency*, indicates that differing treatment based upon a person's inability to speak, read, write, or understand English is a type of national origin discrimination. It directs each agency to publish guidance for its respective recipients clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including all MPO departments receiving federal grant funds.

PLAN SUMMARY

The EPMPO has developed this *Limited English Proficiency Plan* to help identify reasonable steps for providing language assistance to persons with Limited English Proficiency (LEP) who wish to access services provided. As defined Executive Order 13166, LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. This plan outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP persons that assistance is available.

In order to prepare this plan, the EPMPO used the four-factor LEP analysis which considers the following factors:

1. The number or proportion of LEP persons in the region who may be served by the EPMPO.
2. The frequency with which LEP persons come in contact with EPMPO services.
3. The nature and importance of services provided by the EPMPO to the LEP population.
4. The resources available to the EPMPO and overall cost to provide LEP assistance.

MEANINGFUL ACCESS: FOUR-FACTOR ANALYSIS

The number or proportion of LEP persons in the EPMPO region who may be served or are likely to require EPMPO services.

In an effort to determine the profile of LEP persons in the planning area that may be affected by the transportation planning process and/or beneficiaries of programs, activities, or services; the EPMPO reviewed the U.S. Census American Community Survey 5-year estimate (2016-2020).

From total population aged 5 years or older 817,150 within the EPMPO planning area 587,841 speak another language than English. Of those who speak another language than English, 253,113 have

limited English proficiency; that is, they speak English "less than very well". From an overall perspective 30.98% of the overall population in the EPMPO planning area (See Table below).

In the EPMPO planning area, of those persons with limited English proficiency, 248,460 speak Spanish, 1290 speak other Indo-European languages, and 2586 speak Asian and other Pacific Islander Languages.

Total Population Aged 5 years or Older^a	817,150	
Aggregate Limited English Proficiency Population	253,113	30.98%
Spanish	248,460	30.41%
Asian and other Pacific Islander Languages	2,586	0.32%
Indo-European Languages	1,290	0.16%
Other Languages	777	0.10%

^a The guidance for Limited English Proficiency (LEP) for U.S. Department of Transportation (DOT) recipients refers to persons age five years and over who speak English less than "very well." (Data from 2020 ACS 5-Year estimates, Table B16005.) ACS data are based on a sample and are subject to sampling variability.

The frequency with which LEP persons come in contact with EPMPO services.

The EPMPO staff reviewed the frequency with which the Transportation Policy Board (TPB), EPMPO stakeholders, and office staff have, or could have, contact with LEP population. This includes attendance of stakeholder and public meetings, phone inquiries, office visits, and documents. To date, the EPMPO has had a few requests for interpreters and several requests for translated program documents. The TPB, EPMPO stakeholders, and office staff have had a moderate level of occasions where there was contact with LEP population.

The nature and importance of services provided by the EPMPO to the LEP population

In compliance with the Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency," the EPMPO must ensure that all segments of the population, including LEP persons, have the opportunity to be involved in the transportation planning process.

MPO's main function is to support cooperative, comprehensive, and continuing transportation planning as outlined in federal transportation acts. The MPO develops three main documents the Metropolitan Transportation Plan (MTP), Transportation Improvement Program (TIP) and Unified Planning Work Program (UPWP), and as needed, other studies. Transportation improvements resulting from these planning activities have an impact on all residents. Through the elements of its Public Participation Plan, EPMPO encourages input from all stakeholders and every practicable effort is taken to make the planning process as inclusive as possible. As a result of the long range

transportation planning process, projects are selected to receive federal funding and progress toward project planning and construction under the responsibility of local jurisdictions or transportation agencies.

The resources available to the EPMPO, and overall costs to provide LEP assistance.

The EPMPO reviewed its available resources that could be used for providing LEP assistance. Some document translations are prepared by staff and outside sources for a fee. Translators for meeting are hired for a fee and used upon request.

LANGUAGE ASSISTANCE

A person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to EPMPO services. Language assistance can include interpretation, which means oral or spoken transfer of a message from one language into another language and/or translation, which means the written transfer of a message from one language into another language.

How the EPMPO staff may identify an LEP person who needs language assistance:

- Post notice of LEP Plan and the availability of language assistance including interpretation or translation services in languages LEP persons would understand free of charge.
- All EPMPO staff will be informally surveyed periodically on their experience concerning any contacts with LEP persons during the previous year to assess need for additional language assistance measures.
- When the EPMPO sponsors an informational meeting or event, an advanced public notice of the event should be published including special needs related to offering a translator (LEP) or interpreter (sign language for hearing impaired individuals). Additionally, a staff member may greet participants as they arrive. By informally engaging participants in conversation it is possible to gauge each attendee's ability to speak and understand English. Although translation may not be able to be provided at the event it will help identify the need for future events.

Language Assistance Measures

In reference to language assistance measures the EPMPO will offer the following measures:

- The EPMPO staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating English.
- The following resources will be available to accommodate LEP persons:
 - Interpreters for the Spanish language will be made available upon request and will be provided within a reasonable time period.

- Language interpretation will be accessed for all other languages through a telephone interpretation service.

STAFF TRAINING

The following training will be provided to all staff:

- Information on the Title VI Policy and LEP responsibilities
- Description of language assistance services offered to the public
- Documentation of language assistance requests
- How to process a potential Title VI/LEP complaint
- Use of LEP “I Speak Cards”

All contractors or subcontractors performing work for the EPMPO will be required to follow the Title VI LEP guidelines.

TRANSLATION OF DOCUMENTS

The EPMPO weighed the cost and benefits of translating documents for potential LEP groups. Considering the expense of translating the documents, the likelihood of frequent changes in documents and other relevant factors, at this time it is an unnecessary burden to have any documents translated.

The EPMPO does have a formal outreach procedure in place that is included in the EPMPO Public Participation Plan. Translation resources have been identified and are limited in this region. However, when and if the need arises for LEP outreach, the EPMPO will consider the following options:

- When staff prepares a document, or schedules a meeting, for which the target audience is expected to include LEP individuals, then documents, meeting notices, flyers, and agendas will be printed in an alternative language based on the known LEP population.
- Vital documents that have been translated to Spanish include:
 - EPMPO Title VI Public Notice
 - EPMPO Title VI Complaint procedures
 - EPMPO Title VI Complaint form

Additionally, the following language is included in Spanish in the EPMPO posted agendas for the Transportation Policy Board, Transportation Project Advisory Committee and Executive Committee meetings which are open to the public.

Sign Language and foreign interpreters (provided that one is available) and copies of the Agenda will be provided in Braille, large print, other languages, or audiotape upon request made at a minimum of 48 hours prior to the date and time of the meeting.

Lenguaje de señas, intérpretes al español (a condición de que uno esté disponible) y copias de la agenda se proveerán en Braille, copias ampliadas, otros idiomas, o la cinta magnética para audio con petición de un mínimo de 48 horas antes de la fecha y de la hora de la reunión

MONITORING

MPO will review and update the LEP Plan as required. At a minimum, the plan will be revised when complete data from 2010 U.S. Census is available, or as noted demographic changes indicate higher concentrations of LEP individuals are present in the MPO study area. Updates will include the following:

- The number of documented LEP person contacts encountered annually.
- How the needs of LEP persons have been addressed.
- Determination of the current LEP population in the planning area.
- Determination as to whether the need for translation services has changed.
- Determine whether local language assistance programs have been effective and sufficient to meet the need.
- Determine whether the EPMPO's financial resources are sufficient to fund language assistance resources needed.
- Determine whether the EPMPO fully complies with the goals of this LEP Plan.
- Determine whether complaints have been received concerning the agency's failure to meet the needs of LEP individuals.
- Maintain a Title VI complaint log, including LEP to determine issues and basis of complaints as identified in Appendix B of the EPMPO Public Participation Plan.

DISSEMINATION OF THE EPMPO LEP PLAN

- Post signs at conspicuous and accessible locations notifying LEP population of the LEP Plan and how to access language services.
- State on agendas and public notices, in the language an LEP person would understand, that documents are available in different languages upon request at (915) 212-0258.
- LEP Plan, translated documents, and any associated information can also be found on our website at www.elpasompo.org

Questions and comments can be forwarded to Title VI Coordinator, EPMPO Executive Director.
211 N. Florence St., Suite 202, El Paso, TX. 79901 (915) 212-0258
ExecutiveDirector@elpasompo.org