

MEMORANDUM OF UNDERSTANDING (MOU)

LAKE HAVASU METROPOLITAN PLANNING ORGNIZATION, "FUTURE" PROVIDER(S) OF PUBLIC TRANSPORTATION AND THE ARIZONA DEPARTMENT OF TRANSPORTATION

PERFORMANCE MEASURE TARGET SETTING AND DATA SHARING

This Memorandum of Understanding (MOU) is made and entered into by and among the Arizona Department of Transportation (ADOT) as the Designated Recipient for federal formula funds in the non-urbanized areas, Lake Havasu Metropolitan Planning Organization (LHMPO) as the designated Metropolitan Planning Organization, the "future" Provider(s) of Public Transportation as Designated Recipient for federal formula funds in the urbanized areas, referred to collectively as the "PARTIES" or individually as a "PARTY".

This MOU shall become effective as of the date it has been approved by all PARTIES.

I. Purpose of the Memorandum of Understanding

LHMPO, ADOT, and the "future" Provider(s) of Public Transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the establishment of performance targets, the reporting of performance targets, the reporting of performance measures to be used in tracking progress toward attainment of critical outcomes for the LHMPO region, and the collection of data for the State asset management plan for the National Highway System.

II. Responsibilities of All Parties

- a. LHMPO, ADOT, and the "future" Provider(s) of Public Transportation shall coordinate on the establishment of targets in accordance with 23 CFR part 450 to ensure consistency, to the maximum extent practicable.
- b. The PARTIES will adopt performance targets for the metropolitan transportation planning process in accordance with Federal and State requirements.
- c. Unified targets, as required by 23 CFR Part 450, shall be developed jointly by ADOT and LHMPO. Non-Unified targets are required to be established by ADOT, and LHMPO shall have the option to agree and adopt them or calculate and establish LHMPO-specific targets.

III. Responsibilities of the Arizona Department of Transportation

- a. ADOT will develop draft statewide required performance targets in coordination with LHMPO, as applicable. Coordination may include in-person meetings, web meetings, conference calls, and/or email communication. ADOT shall provide LHMPO with a reasonable opportunity to provide comments on statewide targets prior to the adoption of final statewide targets.
- b. ADOT shall take action necessary to meet all State and Federal laws required as related to Performance Based Planning and Programming and shall involve Parties as necessary and appropriate.
- c. Upon request, and when not contractually prohibited, ADOT will share with the PARTIES data obtained or collected to support the development of statewide targets and in support of ongoing performance measure tracking.
- d. ADOT will report its performance targets to FHWA and FTA, as applicable. A copy of the report will be sent to the PARTIES at that time.
- e. ADOT will be responsible for collecting bridge and pavement condition data. The data shall be used for but not limited to creation of the State Asset Management Plan for the National Highway System. Safety and other data to be collected as required.
- f. To the maximum extent practicable, ADOT will include in its State Transportation Improvement Program (STIP) a description of the anticipated effect of the STIP toward achieving agreed upon performance targets.
- g. ADOT's STIP will include a linkage from the investment priorities in the STIP to achievement of agreed upon performance targets.
- h. ADOT shall ensure any of its reporting of targets and performance shall conform to 23 CFR 490, 49 CFR 625, and 49 CFR 673.

IV. Responsibilities of the Lake Havasu Metropolitan Planning Organization

- a. The MPO will establish necessary transportation performance targets and/or adopt ADOT performance targets and will share documentation pertaining to the development, reporting and tracking of those targets with the PARTIES.
- b. Upon request, and when not contractually prohibited, LHMPO will share with the PARTIES data obtained or collected in support of performance measure tracking.

- c. The establishment of targets shall progress through the LHMPO committee process. The Technical Advisory committee will provide recommendations to the Executive Board. The Executive Board, as the governing and policy-making body for LHMPO, will take final action.
- d. LHMPO will report its performance targets to FHWA and FTA, as applicable. A copy of all reports will be sent to the PARTIES at that time.
- e. LHMPO will, by reference in the RTP, prepare a System Performance Report to report the condition and performance of the transportation system with respect to the Federally required performance targets including progress achieved by LHMPO toward the agreed upon performance targets.
- f. To the maximum extent practicable, LHMPO will include in its Transportation Improvement Program (TIP) a description of the anticipated effect of the TIP toward achieving agreed upon performance targets.
- g. LHMPO's TIP will include a linkage from the investment priorities in the TIP to achievement of previously established and agreed upon performance targets.

V. Responsibilities of the "future" Provider(s) of Public Transportation

- a. The "future" Provider(s) of Public Transportation will establish transit asset management, safety and other required transit performance targets and share established targets with the PARTIES.
- b. Upon request, and when not contractually prohibited, the "future" Provider(s) of Public Transportation will share with the PARTIES data obtained or collected in support of performance measure tracking.
- c. The "future" Provider(s) of Public Transportation will provide an outline of the adoption process to the PARTIES once established.
- d. The "future" Provider(s) of Public Transportation will report performance targets to FTA. A copy of all reports will be sent to the other PARTIES at that time.

VI. Conflict Resolution section

If disagreements arise regarding the implementation of this agreement, all PARTIES shall act in good faith to resolve the disagreement. If a resolution

cannot be reached, the PARTIES to this agreement agree to meet and have a representative from the Federal Highway Administration or the Federal Transit Administration to assist in resolving the disagreement. In the event a resolution still cannot be reached, the parties hereto agree to abide by required arbitration as set forth for public works in Agreement in Arizona Revised Statutes Section 12-1518

VII. Term

This Memorandum shall become effective when fully executed by the PARTIES. It shall remain in full force and effect until it is terminated in writing by one or all of the PARTIES, whichever date occurs first.

VIII. Governing Law and Venue

This MOU shall be governed by the laws of the State of Arizona. All cited regulations, statutes, public law, executive orders, and/or policies cited in this MOU are incorporated by reference as a part of this MOU. All parties shall comply with all applicable Federal, State and local requirements where and when relevant.

IX. Authorities not altered.

Nothing in this MOU alters, limits, or supersedes the authorities or responsibilities of any party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the parties to perform beyond their respective authorities.

X. Severability

If a provision contained in this MOU is held invalid for any reason, the invalidity does not affect other provisions of the MOU and can be given effect without the invalid provision, and to this end the provisions of this MOU are severable.

XI. Indemnification

Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers.

XII. Discrimination

This MOU is subject to the provisions of Title VI of the Civil Rights Act. The Parties or their sub-contractors/consultants shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, Arizona State Executive Order 2009-09, or A.R.S. 41-1461 through 1465, which mandates that all persons, regardless of race, color, religion, sex age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. Each Party shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.

Each Party assures that it will comply with applicable provisions of the Americans with Disabilities Act (ADA), (Public Law No. 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act including 28 CFR parts 35-36, and applicable provisions of 49 CFR Parts 27, 37 and 38: Transportation for Individuals with Disabilities; Final Rule. The parties to this MOU shall comply with Executive Order Number 2009-09 issued by

the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

XIII. Immigration

To the extent applicable under Arizona Revised Statutes Section 41-4401, each Party warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under Arizona Revised Statutes Section 23-214(A). A breach of the above-mentioned warranty by any Party or its subcontractors shall be deemed a material breach of the MOU and may result in the termination of the MOU by the non-breaching Parties. Each Party retains the legal right to randomly inspect the papers and records of the other Parties or its subcontractor employees who work on the MOU to ensure that the Parties or its subcontractors are complying with the above-mentioned warranty.

XIV. No Boycott of Israel

Each Party warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.

SIGNATURE PAGE

EXECUTED by the PARTIES, each respective entity acting by and through its duly authorized official as required by law.

 Date: 6/12/18

Chairman Mark S. Nexsen
Lake Havasu Metropolitan Planning Organization

 Date: 11/19/18

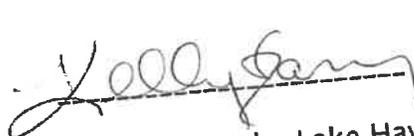
Multimodal Planning Division Director
Arizona Department of Transportation

Approved as to Content:

 Date: 6/12/18

Vinny Gallegos, Director
Lake Havasu Metropolitan Planning Organization

Approved as to form:

 Date: 6/6/18

Attorney for the Lake Havasu Metropolitan Planning Organization

