

FIDUCIARY AGENT AGREEMENT

by and between

the Boston Metropolitan Planning Organization

and the Metropolitan Area Planning Council

to Employ Staff and Provide Administrative Services

for the Boston Metropolitan Planning Organization

WHEREAS, the Metropolitan Area Planning Council (MAPC) has been established pursuant to Chapter 40B of the Massachusetts General Laws in order to provide comprehensive land use, economic development, and transportation planning for a district of 101 municipalities in greater Boston (the DISTRICT); and

WHEREAS, the Boston Metropolitan Planning Organization (the BOSTON MPO) has been established pursuant to a Memorandum of Understanding (MOU) executed on January 7, 1997, in order to conduct the comprehensive, continuing, and cooperative transportation planning process for the DISTRICT pursuant to Title 23 U.S.C. 134; and

WHEREAS, because neither the BOSTON MPO nor its staff, the Central Transportation Planning Staff (CTPS), is an entity that can legally accept and disburse funds or execute contracts, the 1997 MOU requires the BOSTON MPO to engage a fiduciary agent to employ CTPS staff and to administer CTPS financial resources according to policies established by the BOSTON MPO, and which shall be required to implement actions of the BOSTON MPO, subject only to applicable federal, state, and local laws and regulations and the availability of funds; and

WHEREAS, pursuant to the 1997 MOU, the BOSTON MPO has agreed to indemnify and hold harmless the fiduciary agent from liabilities occurring out of actions taken under its normal administration of CTPS activities; and

WHEREAS, MAPC, acting through its Executive Committee and Executive Director, considers the work contemplated in this agreement to be in furtherance of the professional duties of MAPC and the proper work of MAPC.

NOW THEREFORE, effective for operations beginning July 1, 1997, the signatories to this Agreement jointly agree that the BOSTON MPO will retain MAPC to continue to serve as fiduciary agent to employ all CTPS staff and to administer all of CTPS's financial resources subject to the terms of this Agreement. As the fiduciary agent, MAPC agrees to implement promptly the actions of the BOSTON MPO subject only to applicable federal, state, and local laws and regulations and the availability of funds.

I. THE CENTRAL TRANSPORTATION PLANNING STAFF (THE BOSTON MPO'S STAFF)

The BOSTON MPO's staff operates under the title of the Central Transportation Planning Staff (CTPS) and they shall be considered one and the same. CTPS shall operate under the direction of a staff director (the "CTPS Director") who shall be appointed by the BOSTON MPO. The CTPS Director shall make regular reports to the BOSTON MPO and its designated subcommittees and shall exercise day-to-day responsibility for CTPS in accord with applicable federal, state, and local laws and regulations, the availability of funds, the policy direction of the BOSTON MPO, and the procedures of MAPC's financial, personnel, and other administrative systems.

It is understood that, while CTPS staff will receive overall direction from the BOSTON MPO, they legally will be employees of MAPC and, as such, the BOSTON MPO agrees that it shall be governed by MAPC's Personnel Policies and Procedures Handbook. Notwithstanding, the BOSTON MPO reserves the right to add or delete fringe benefits for CTPS staff. If the BOSTON MPO chooses to deviate from MAPC's standard fringe benefits package, MAPC and the BOSTON MPO agree to determine jointly the cost of any additional administration and how the costs will be allocated.

Upon presentation of any plans, salary increases, and promotions as submitted by the BOSTON MPO, MAPC agrees to approve said plans, etc., at the next MAPC Executive Committee meeting, subject only to applicable federal, state, and local laws and regulations, the availability of funds, and the notice and procedural requirements of the Executive Committee.

It is understood and agreed that the BOSTON MPO and CTPS, within the context of the Unified Planning Work Program (UPWP), may be requested by various agencies, authorities, administrations, or other entities to provide planning services that may be unrelated to the BOSTON MPO and the DISTRICT. MAPC agrees to process all related transactions for this work in the same manner in which it processes regular CTPS business.

MAPC's governing statute, M.G.L. Chapter 40B, requires MAPC to approve a budget at its annual meeting that includes all agency programs and those for which it has administrative responsibility such as CTPS's. MAPC agrees to approve the CTPS budget at the MAPC Annual Meeting as submitted by the BOSTON MPO subject only to applicable federal, state, and local laws and regulations and the availability of funds. The BOSTON MPO agrees to submit a draft CTPS budget for each July 1-to-June 30 fiscal year to MAPC on or about April 1 and a final budget by May 1.

II. LIABILITY AND INDEMNIFICATION

MAPC agrees to obtain and maintain agency-wide officers errors and omissions, general liability, and employee practices insurance policies that include coverage of the BOSTON MPO with the premiums charged in accordance with the shared central services cost pool of the Cost Allocation Plan. Each policy shall provide coverage in the amount of at least \$1,000,000.

The BOSTON MPO agrees to indemnify, defend, and hold harmless MAPC against any and all claims and liabilities arising out of the actions of the BOSTON MPO including any of its staff, agents, or members. Such claims and liabilities include, but are not limited to, unemployment costs, legal fees, other costs of legal action, and judgments rendered by courts of law, administrative bodies, or arbitrators. If any claims or liabilities against MAPC exceed the proceeds of insurance or the limitations of the Tort Claims Act, the excess amount shall be charged to the CTPS fund balance and any other available assets of CTPS. If such claims and liabilities exceed the ability of CTPS to pay, MAPC shall notify the Chairman of the BOSTON MPO, the Executive Secretary of the BOSTON MPO, the CTPS Director, and the full membership of the BOSTON MPO who agree to work with federal and state agencies, the Governor's office, and the Legislature to fully indemnify and/or reimburse MAPC on a case-by-case basis.

MAPC agrees to indemnify and hold harmless the CTPS fund balance and any other assets of CTPS against any and all claims and liabilities arising out of the actions of MAPC including any of its staff, agents, members, or programs administered by MAPC other than those related to CTPS. Such claims and liabilities include, but are not limited to, unemployment costs, legal fees, other costs of legal action, and judgments rendered by courts of law, administrative bodies, or arbitrators. If such claims and liabilities exceed the proceeds of insurance or the limitations of the Tort Claims Act, the excess amount shall be charged to the MAPC fund balance and any other available assets of MAPC.

MAPC and the BOSTON MPO agree to develop jointly a "Risk Management Policy" which shall be adopted by MAPC and the BOSTON MPO independently and shall assist the Executive Director of MAPC and the CTPS Director in providing training and supervision of their respective staffs. The MAPC and BOSTON MPO agree to make appropriate staff available to participate in programs designed to reduce the legal exposure resulting from violations of state and federal civil rights, affirmative action, and other laws as determined by MAPC in consultation with all its guest agencies and programs and the "Risk Management Policy." The cost of such programs will be allocated to the shared central services cost pool of the Cost Allocation Plan.

III. REMEDIES FOR NON-COMPLIANCE

A determination that MAPC or its staff is in non-compliance hereunder by failure to take an action required by this Agreement shall be made by the BOSTON MPO, which agrees, through its Chairman, to give the President of MAPC, the MAPC Executive Director, and the full membership of the MAPC Executive Committee at least 7 calendar days advance written notice of its intention to convene a meeting of the BOSTON MPO at which time it will determine whether or not there has been non-compliance on the part of MAPC and of its intention to resolve the matter via arbitration. MAPC or its staff may, during said notice period, address the issues of questioned compliance and, if the Chairman of the BOSTON MPO determines that the matter is fully resolved before the meeting, there shall be no arbitration proceedings.

A determination that the BOSTON MPO or CTPS is in non-compliance hereunder by failure to take an action required by this Agreement shall be made by the MAPC Executive Committee, which agrees, through its President, to give the Executive Secretary of the BOSTON MPO at least 7 calendar days advance written notice of its intention to convene a meeting of the MAPC Executive Committee at which time it will determine whether or not there has been non-compliance on the part of the BOSTON MPO. The Executive Secretary of the BOSTON MPO or its staff may, during said notice period, address the issues of questioned compliance and, if the President of MAPC determines that the matter is fully resolved before the meeting, there shall be no further action required. If the matter is not resolved, the President of MAPC shall prepare a written request to the Chairman of the BOSTON MPO with copies to each MPO member stating MAPC's desire to have an MPO meeting convened to resolve the matter via arbitration.

If either party makes a determination of non-compliance and the two parties continue to be unable to resolve the issues, the matter may be submitted to binding arbitration with costs of the arbitrator borne by the unsuccessful party. The arbitrator shall be assigned by the Massachusetts Office of Dispute Resolution, shall specify the actions that each party must take in order to be in compliance with this agreement, and shall set a deadline for the actions. If MAPC has failed to perform its responsibilities under this Agreement, the arbitrator, at the arbitrator's discretion, may impose a penalty of up to \$500 per day with the total amount not to exceed \$10,000. This penalty shall be paid from the fund balance of MAPC to the fund balance of CTPS.

IV. ADMINISTRATIVE APPENDIX

Attached hereto, and incorporated herein by reference, is an Administrative Appendix which may be amended in a manner specified in the appendix.

V. TERM AND TERMINATION

This Agreement shall remain in effect through June 30, 2002, or until terminated by one of the parties and shall be reviewed initially within one year of signing and at least every two years thereafter. At the time of the review, either party may consider termination of this Agreement for convenience utilizing the procedure described below. MAPC or the BOSTON MPO may terminate this Agreement at any time for cause subject to the procedure described below. Termination for cause shall mean gross failure to perform the duties assigned to one of the parties under this Agreement. From time to time, it may become necessary to modify this Agreement, and either the BOSTON MPO or MAPC may initiate a proposed change to the Agreement. The specifications of this Agreement may not be varied unless specifically agreed to in writing and signed by both parties.

The termination procedure is as follows:

Termination by the BOSTON MPO

For the BOSTON MPO, the authority to cancel this Agreement shall be exercised by its Chairman pursuant to a vote of the BOSTON MPO. The Chairman of the BOSTON MPO agrees to give the MAPC President, the MAPC Executive Director, and the full membership of the MAPC Executive Committee at least 30 calendar days advance written notice of its intention to convene a meeting of the BOSTON MPO at which time it will be requested to terminate this Agreement.

Termination by MAPC

For MAPC, the authority to cancel this Agreement shall be exercised by its President pursuant to a vote of the MAPC Executive Committee. The President of MAPC agrees to give the Chairman of the BOSTON MPO, the Executive Secretary of the BOSTON MPO, the CTPS Director, and the full membership of the BOSTON MPO at least 30 calendar days advance written notice of its intention to convene a meeting of the MAPC Executive Committee at which time it will be requested to terminate this Agreement.

Upon the termination of this Agreement by either party, MAPC agrees to settle all outstanding obligations, including consulting with contracting agencies in the re-writing of joint contracts and transferring financial records and assets related to CTPS operations, within one year, subject to final adjustment in the annual, independent audit as outlined in the Administrative Appendix. Title to and disposition of property acquired by MAPC on behalf of the BOSTON MPO and CTPS shall be governed by the requirements of applicable federal regulations.

VI. SIGNATURES

The undersigned representatives of the Metropolitan Area Planning Council and of the Boston Metropolitan Planning Organization have been authorized by their respective organizations to execute this agreement; attached are a certified vote of the MAPC Executive Committee and an endorsement sheet from each BOSTON MPO member.

FOR MAPC:

FOR THE BOSTON MPO:

Richard C. Walker, III, President

Kevin J. Sullivan, Chairman

Date

Date

ADMINISTRATIVE APPENDIX
TO THE
FIDUCIARY AGENT AGREEMENT BETWEEN
THE METROPOLITAN AREA PLANNING COUNCIL
AND
THE BOSTON METROPOLITAN PLANNING ORGANIZATION

MAPC staff and CTPS staff agree to meet periodically to discuss opportunities for improvement to the following agency financial, personnel, and other systems and procedures:

1. PROCESSING TRANSACTIONS

a. General Procedure

Transactions will include, but not be limited to, processing paperwork associated with CTPS grants and contracts, budgets, procurements, payroll and other expenses, personnel administration including recruitment, staff status changes, and staff salary compensation plans, accounting entries, and cash management. Unless otherwise provided herein, transactions shall be processed in accordance with MAPC's financial, personnel, and other administrative systems. The BOSTON MPO agrees to maintain a current list of the person(s) authorized to submit CTPS transactions to MAPC detailed by transaction type and to provide the list to the Executive Director of MAPC annually by July 1 and also whenever updated during a fiscal year.

b. Procurements

MAPC and the BOSTON MPO understand and acknowledge that both MAPC and CTPS are subject to the requirements of M.G.L. Chapter 30B regarding procurements and that MAPC's Director of Administration and Finance shall perform the function of Chief Procurement Officer as described in this law concerning the rules and regulations governing procurement. MAPC agrees to process transactions that comply with these rules and regulations.

c. **Accounting**

MAPC agrees to account for all CTPS financial transactions – accounts receivable, accounts payable, project management, general ledger, and payroll – separately from other agency transactions in a self-reconciling set of accounts that includes a CTPS fund balance.

d. **Cash Management**

MAPC agrees to process payments on behalf of CTPS only at the direction of the CTPS staff specified in the approved authorization list discussed above subject only to applicable federal, state, and local laws and regulations and the availability of funds. The BOSTON MPO and its individual contractors having funds administered by MAPC agree to pay, subject to the payment processing systems of the contractors, within 30 days of receipt all invoices submitted by MAPC for advances and services related to all programs funded by the BOSTON MPO for CTPS.

e. **Transaction Reporting**

MAPC agrees to maintain financial, job cost, personnel, and administrative reporting systems that allow for CTPS on-line access to its summary and detail transaction data in order for CTPS to manage its operational activities. The BOSTON MPO and MAPC agree that CTPS may enter the data for BOSTON MPO projects to the administrative reporting systems through a mutually agreed upon process.

MAPC agrees to provide a standard balance sheet and a statement of revenues and expenditures to the BOSTON MPO on a monthly basis. The BOSTON MPO may prepare supplemental schedules and project reports as necessary.

2. **ADMINISTRATIVE ISSUES**

a. **Personnel**

Section I of this agreement provides the BOSTON MPO with the ability to establish different fringe benefits for CTPS staff from those provided by MAPC. If the BOSTON MPO has an interest in changing any other personnel policy or procedure, it may present a proposal to MAPC for consideration and action. MAPC agrees to involve the BOSTON MPO in the development of any revisions to the Personnel Policies and

Procedures Handbook and to provide a reasonable review period before implementing any changes to it.

b. **Annual Audit and Access to Records**

The BOSTON MPO agrees to provide to authorized representatives of MAPC, its auditors, and grantor agencies prompt and complete access to all records, facilities, assets, and personnel related to CTPS transactions necessary to carry out its responsibilities as fiduciary agent pursuant to this agreement at any time during the fiscal year including work performed for agencies and other contractors as provided for in Section I of this agreement. MAPC agrees to provide to authorized representatives of the BOSTON MPO prompt and complete access to all records, facilities, assets, and personnel related to CTPS transactions pursuant to this agreement at any time during the fiscal year.

MAPC and the BOSTON MPO understand and acknowledge that MAPC will retain an independent auditor on an annual basis to conduct an audit of all programs administered by MAPC including those operated by the BOSTON MPO and that this audit will satisfy federal Single Audit Act requirements. MAPC will provide draft audit reports to the BOSTON MPO as they become available and provide the BOSTON MPO an opportunity to respond in writing to any issue related to its operations before accepting the final audit report.

c. **Working Capital**

In addition to other CTPS funds on deposit with MAPC, the BOSTON MPO and each BOSTON MPO agency and contractor doing business with the MPO agrees to provide MAPC with advances for all CTPS grants and contracts administered by MAPC. MAPC and the BOSTON MPO agree that the amounts provided shall be determined on a contract-by-contract basis and shall be equal to not less than 6 weeks of each contract's expected term of operations calculated on a proportional basis.

MAPC agrees to deposit all cash receipts to its interest-bearing government investment account, subject to any legal or regulatory restrictions, and to transfer the current cash needs of all MAPC programs including those needs of CTPS to its regular non-interest-bearing account on a weekly basis. MAPC agrees to calculate cash balances for all agency programs including CTPS operations on a weekly basis. At the close of a month, subject to any legal or regulatory restrictions, MAPC will use the weekly cash balances to calculate an average monthly balance for each

program and then will allocate the actual interest earned by the government investment account as revenue to each program on a proportional basis.

The Executive Director of MAPC and the Executive Secretary of the BOSTON MPO through their respective staff agree to monitor jointly CTPS cash balances. The BOSTON MPO agrees to take whatever action is deemed necessary to relieve any shortfall in CTPS cash on hand relative to current cash needs.

If CTPS's operating expenses exceed its available cash on hand and any MAPC funds are used to offset the cash flow imbalance, subject to any legal or regulatory restrictions, CTPS will reimburse MAPC for the amount of interest foregone based on the current rate in MAPC's government investment account.

If MAPC's operating expenses exceed its available cash on hand, and any CTPS funds are used to offset the cash flow imbalance, subject to any legal or regulatory restrictions, MAPC will reimburse CTPS for the amount of interest foregone based on the current rate in MAPC's government investment account.

3. REIMBURSEMENT FOR SHARED CENTRAL SERVICES

MAPC and the BOSTON MPO understand and acknowledge that MAPC is a unit of government subject to OMB Circular A-87: Cost Principles for State, Local and Indian Tribal Governments regarding the receipt and expenditure of federal grant funds. This regulation requires MAPC to prepare and implement a plan for the allocation of shared central services costs to all programs administered by MAPC. Annually, MAPC agrees to develop a cost allocation plan (CAP) in consultation with all agencies, programs, and departments incurring indirect costs and receiving shared central services cost allocations from MAPC.

MAPC agrees to submit the plan for the approval of the cognizant federal agency. The BOSTON MPO agrees that MAPC shall use the approved indirect cost rates to bill grantor agencies on a provisional basis during the year with an adjustment to actual costs at year-end. MAPC agrees to monitor the performance of the plan on at least a quarterly basis and notify the Executive Secretary of the BOSTON MPO if there is a significant deviation from the budgeted performance, and both parties agree to discuss whether corrective actions should be taken.

MAPC shall charge the CTPS accounts weekly on a provisional rate basis for shared central services costs according to the approved CAP, with a

reconciliation to actual costs as part of the annual independent audit. If the shared central services costs charged to CTPS cost centers after year-end audit exceed 6.5% of total CTPS payroll which includes employee wages, consultant staff payments, and leave benefits combined, MAPC agrees to pay the difference from the MAPC fund balance. If the shared central services costs charged to CTPS cost centers after year-end audit is lower than \$180,000, the BOSTON MPO agrees to pay the difference between \$180,000 and the audited central services costs to MAPC from the CTPS fund balance.

MAPC agrees to involve the BOSTON MPO in any decision to modify, replace, or discontinue central accounting and reporting systems. MAPC and the BOSTON MPO agree to determine jointly how capital spending for central services accounting and reporting should be charged to the various cost centers outside of the shared central services cost pool prior to the final decision to modify, replace, or discontinue.

4. AMENDMENTS TO THE ADMINISTRATIVE APPENDIX

Amendments to the Administrative Appendix may be proposed by the Executive Director of MAPC or the Executive Secretary of the BOSTON MPO, who shall jointly have the responsibility for determining whether the amendment is procedural or substantive. If the amendment is procedural, it shall be implemented by administrative action and filed with MAPC and the BOSTON MPO. If the amendment is deemed substantive, it shall require the action of the MAPC Executive Committee and the BOSTON MPO. The amendment shall be presented to both boards for action at their next meetings.

