

EL PASO MASS TRANSIT DEPARTMENT

TRANSIT BOARD ACTION

DATE	REFERENCE NO.	SUBJECT:	ITEM NO:
7-14-09	09-76	Resolution - Interlocal Agreement with the County of El Paso, Texas	2

BACKGROUND:

On the agenda today is a Resolution that the Chairman of the Mass Transit Board be authorized to sign an Interlocal Agreement with the County of El Paso, Texas, for the regional planning and coordination of the State's public transportation resources, at a cost of \$10,000.00 to the City, to be paid from 2006 new Freedom Grant funds.

RECOMMENDATION:

It is therefore recommended that the Chairman of the Mass Transit Board be authorized to sign an Interlocal Agreement with the County of El Paso, Texas.

DISPOSITION BY TRANSIT BOARD:	SECRETARY
APPROVED	
OTHER (DESCRIBE)	
SUBMITTED BY:	DATE:

RESOLUTION

BE IT RESOLVED BY THE MASS TRANSIT DEPARTMENT BOARD OF THE CITY OF EL PASO,

THAT the Chairman of the Mass Transit Department Board be authorized to sign an Interlocal Agreement with the County of El Paso, Texas, for the regional planning and coordination of the State's public transportation resources, at a cost of \$10,000.00 to the City, to be paid from 2006 New Freedom Grant funds.

ADOPTED this _____ day of _____, 2009.

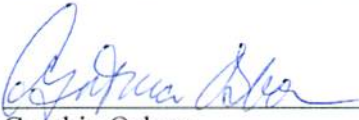
CITY OF EL PASO

John Cook, Chairman
Mass Transit Department Board

ATTEST:


Richarda Duffy Momsen, Secretary
Mass Transit Department Board

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Jay Banasick, Director
Mass Transit Department

WHEREAS, the CITY and the COUNTY are interested in entering into an agreement in which the County provides Mobility Management services and continues to fulfill its Regional Coordination Lead Agency responsibilities in furtherance of the development of additional public transportation options for the El Paso region, and such cooperation is deemed a public benefit for the region; and

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness; and

WHEREAS, such a consolidated effort in coordinated public transportation is in each party's best interest and that of the public and this agreement will increase the effective and efficient functioning of each party; and

WHEREAS, the COUNTY and the CITY are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, the COUNTY and the CITY specify that any party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

ARTICLE ONE
Contractual Relationship; Nature of Agreement

1.1 The Parties are independent contractors. Except as expressly provided for in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided in this Agreement, neither Party has, and neither Party shall attempt to assert the authority to make commitments for or to bind the other Party to any obligation.

ARTICLE TWO
Mobility Management

2.1 DESCRIPTION OF SERVICES. The County shall serve as Lead Agency and supply professional planning support to the Far West Texas / El Paso Regional Transportation Coordination Committee in furtherance of the Committee's role in regional human services – public transportation coordination as outlined in Chapter 461 of the Texas Transportation Code and provide Mobility Management services consistent with Regional Plan objectives to improve mobility for members of the public and especially transit dependent populations.

ARTICLE THREE
Invoicing and Payment

3.1 Invoicing. The COUNTY will invoice the CITY within thirty (30) days of the execution of this agreement the sum of ten thousand dollars (\$10,000) which shall represent the full amount due to the County for the twelve month period of this agreement.

3.2 Payment. The CITY will make payments on the COUNTY invoice within thirty (30) calendar days of the date of the invoice. Payments should be sent to:

El Paso County Auditor
500 East San Antonio St., Room 406
El Paso, Texas 79901-2421

ARTICLE FOUR
Compliance with Laws

4.1 The CITY and the COUNTY shall comply with all applicable laws in performance of their obligations under this Agreement.

4.2 The CITY shall have the right to rely on any interpretation of applicable law made by the COUNTY at the request of the CITY, or otherwise.

4.3 The CITY and the COUNTY shall observe all applicable laws, in accordance with the funding source, specifically, U.S. Department of Transportation, FTA, New Freedom (49 USC 5317).

ARTICLE FIVE
Risk Allocation - Limitation of Liability - Indemnification

5.1 Governmental Function. The Parties expressly agree that, in all things relating to this Agreement, the Parties are performing governmental functions, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of any Party which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

5.2 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, no Party shall be liable to the other Party (nor to any person claiming rights derived from such Party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, or other economic damage, and further including injury to property, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the Party was advised, had other reason to know, or in fact knew of the possibility thereof. The CITY shall not be liable to the COUNTY or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the COUNTY regardless of whether the CITY was advised, had other reason to know, or in fact knew thereof.

5.3 Intentional Risk Allocation. The Parties each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the Parties.

5.4 Indemnification. The COUNTY shall indemnify and hold harmless the CITY, its directors, officers, employees, agents, attorneys, representatives, successors and assigns, from any and all claims demands, costs, expenses (including attorney's fees and expert witness fees), liabilities and losses of whatsoever kind or character arising out of or in connection with any act or omission of the COUNTY, its directors, officers, employees, agents, attorneys, representatives, successors and assigns in connection with the regional planning and coordination of services contemplated by this Agreement. The COUNTY shall assume on behalf of the CITY, its directors, officers, employees, agents, attorneys, representatives, successors and assigns, and conduct with due diligence and in good faith, the defense of any and all such claims, whether or not the CITY is joined therein, even if such claim or demand is groundless, false or fraudulent. Upon the receipt of notice of the existence of any such claim or demand that would result in a claim for indemnification hereunder, the CITY agrees to send written notice of such claim or demand to the COUNTY.

ARTICLE SIX Term and Termination

6.1 Effective Date. The Effective Date of this Agreement shall be the date signed by both parties.

6.2 Term. The Term of this Agreement shall be twelve (12) months from the effective date of this Agreement.

6.3 Termination. This agreement shall terminate upon notice by the CITY that it has failed to obtain grant funding for the program.

ARTICLE SEVEN General Terms and Conditions

7.1 Amendment. No amendment or modification of this Agreement or any provision of this Agreement shall be effective unless in writing and signed by both parties.

7.2 No Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall in no way affect the right of such Party to require performance of that provision. Any waiver by either Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.

7.3 Binding on Successors. This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns permitted by this Agreement.

7.4 Section Headings. The article headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

7.5 Representation of Counsel; Mutual Negotiation. Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the Parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

7.6 Assignment. Neither Party shall assign the whole or any part of this Agreement, or any funds due or to become due hereunder, without written consent of the other Party.

7.7 Signatories. Each person signing this Agreement on behalf of either party represents and warrants that he or she has the authority to legally bind their respective entity to the provisions hereof and that the representations made to the other party as inducement to enter into this Agreement are still true and correct.

7.8 Entire Agreement. This Agreement, together with all attachments hereto, constitutes the entire agreement between the parties, and all other representations or statements heretofore made, verbal or written, are merged herein.

ARTICLE EIGHT Disputes and Remedies

8.1 Governing Law. This contract shall be governed by the laws of the State of Texas and venue shall lie in the County of El Paso, Texas.

8.2 Rights and Remedies. The duties and obligations imposed by this agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

8.3 Illegality. If any provision of this agreement or the application thereof to any person or circumstance is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this contract and the application of such provision to other persons or circumstance shall not be affected thereby but shall be enforced to the extent permitted by law. The parties agree to negotiate in good faith for a proper amendment to this contract in the event any provision is declared illegal, invalid or unenforceable to reflect the original intent of the parties.

(Signatures begin on following page)

Executed this _____ day of _____, 2009.

CITY OF EL PASO

John Cook, Chairman
Mass Transit Department Board

ATTEST:

Richarda Duffy Momsen, Secretary
Mass Transit Department Board

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT



Jay Banasiak, Director
Mass Transit Department

(Signatures continue on following page)

Executed this _____ day of _____, 2009.

COUNTY OF EL PASO, TEXAS

Anthony Cobos, County Judge

ATTEST:

Delia Briones, County Clerk

APPROVED AS TO CONTENT:

Bob Geyer, Manager
County Transportation Program

APPROVED AS TO FORM:

Lee Shapleigh
Assistant County Attorney