

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date prepared: March 11, 2010

Council Meeting Date: April 6, 2010

TO: Carl Swenson, City Manager

THROUGH: Susan Thorpe, Deputy City Manager *ST*

FROM: William Mattingly, Public Works-Utilities Director *WM*

SUBJECT:

Approve an Intergovernmental Agreement for Americans with Disabilities Act, Paratransit Service between the City of Peoria and the Regional Public Transportation Authority.

RECOMMENDATION:

That the Mayor and Council approve an Intergovernmental Agreement for American with Disabilities Act, Paratransit Service Agreement between the City of Peoria and the Regional Public Transportation Authority, Contract Number 151-34-2010.

SUMMARY:

The City Of Peoria Transit Division currently provides American with Disabilities Act (ADA), Paratransit Service through the Dial-a-Ride program. The City is eligible to receive reimbursement from RPTA to Peoria for certain allowable costs related to transporting ADA certified riders. This agreement provides for reimbursement from RPTA to Peoria for those eligible costs. This agreement terminates on June 30, 2013. The agreement formalizes reimbursement practices which have been in place since July 01, 2008.

The attached Schedule "A" identifies the amount of the annual available funding from RPTA which is contingent upon approval of RPTA's fiscal year budget by the RPTA Board of Directors. According to RPTA's budget process, Schedule "A" will be updated annually.

Staff recommends approval of this ADA Paratransit Service Agreement between the City of Peoria and RPTA to provide reimbursement from Regional Public Transportation Authority for eligible costs related to transporting ADA certified riders in Peoria.

ATTACHMENT: ADA Paratransit Service Agreement Contract # 151-34-2010

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

ADA PARATRANSIT SERVICE AGREEMENT

(The "Agreement")

Contract # 151-34-2010

- BETWEEN: THE City of Peoria, a Municipal Corporation (hereinafter referred to as the "CITY")
- AND: THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY (of Maricopa County), a public agency established pursuant to A.R.S. Section 48-5101, et seq., (hereinafter referred to as the "RPTA").
- WHEREAS: The RPTA is authorized to contract for the provision of public transportation services pursuant to A.R.S. Sections 48-5122 and 48-5123; and
- WHEREAS: The CITY is authorized to contract for the provision of public transportation services pursuant to the City of Peoria Code; and
- WHEREAS: The CITY and the RPTA together with other Maricopa County cities desire to provide a regional public transportation system; and
- WHEREAS: CITY has been authorized by its CITY Council and RPTA has been authorized by its Board of Directors to enter into this Agreement; and
- WHEREAS: The RPTA has established a network of regional public transportation services within Maricopa County; and
- WHEREAS: The CITY, a municipal corporation, and the RPTA, a public agency, have authority in accordance with A.R.S. 11-952 to enter into intergovernmental agreements;
- NOW, THEREFORE IT IS AGREED by and between the parties, as follows:

SECTION 1: SERVICE AREA AND TRANSIT SERVICES

The boundaries of the CITY which are lawfully in effect on the 1st day of July, 2008 shall designate and define the limits of the service area for the purposes of the Agreement.

SECTION 2: TERM AND RENEWAL

This agreement shall commence on July 1, 2008, and shall terminate on June 30, 2013, unless terminated earlier by one of the parties, in which case, written notice of termination shall be required no less than thirty (30) days prior to the proposed termination date. Funding levels for this Agreement shall be determined annually and shall be incorporated into this Agreement through the amendment of Schedule A. Upon termination of this Agreement any and all property used in connection with this Agreement will be promptly returned to the party holding title thereto.

SECTION 3: RPTA RESPONSIBILITY

- 3.1 With respect to ADA Paratransit services, the RPTA shall transfer to the CITY funds allocated by the Board of the RPTA, and specified in Schedule A, for the purposes of reimbursing CITY for the cost to provide ADA Paratransit services. The CITY shall submit a PTF Reimbursement Request Form, Attachment A, certifying that the costs have been incurred and are eligible for reimbursement.
- 3.2 The RPTA may conduct service and financial audits for services operated with any funding from the RPTA.

SECTION 4: CITY RESPONSIBILITY

- 4.1 (a). The CITY expressly acknowledges, understands and agrees that:
 - (i). Expenditures must be made for ADA certified riders to be eligible for reimbursement to provide transit services, excluding fixed route service to persons who are.
- 4.2 The CITY shall provide reasonable financial and operational data to the RPTA with respect to all regional transportation services, as requested from time to time.
- 4.3 The CITY shall comply with all applicable laws, ordinances, regulations and codes of the federal, state and local governments. In performing hereunder, CITY shall adhere to RPTA's Transit Life Cycle Program and its approved policies, as they may be amended from time to time, (collectively referred to as the "TLCP").

- 4.4 The City shall make available all records to the RPTA as they relate to this agreement for a period of time to include five (5) years following execution of this agreement.
- 4.5 The CITY shall comply with all applicable laws, ordinances, regulations and codes of the federal, state and local governments. In performing hereunder, CITY shall adhere to RPTA's Transit Life Cycle Program and its approved policies, as they may be amended from time to time, (collectively referred to as the "TLCP"), including but not limited to a right of first refusal granted the RPTA by a member city owning any project funded in whole or part by the RPTA pursuant to the TLCP..

SECTION 5:

5.1 Records

The Federal Transit Administration (FTA), the Arizona Department of Transportation, the Comptroller General of the United States, or any designee shall have access to any books, documents, papers and records which are pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. All required records shall be maintained for a minimum of three years after all pending matters are closed.

5.2 Covenant Against Contingent Fees

Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of Congress, CITY Council, the RPTA Board or any employee of CITY or RPTA, has any interest, financially or otherwise, in this Agreement.

5.3 Alteration in Character of Work

Minor alterations in the character of work shall be authorized in writing by RPTA and acknowledged by CITY by letter.

5.4 Termination

RPTA and CITY hereby agree to full performance of the covenants and obligations contained herein, except that each reserves the right, at its option and sole discretion, to terminate or abandon the service provided for in this Agreement, or any portion thereof.

Termination of this Agreement may be at any time and for any reason, with or without cause, upon providing thirty (30) calendar days prior written notice. Termination shall be effected by delivery of a Notice of Termination specifying

the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

Upon termination, RPTA shall calculate actual expenses incurred up to and including the date of termination together with any penalty or costs imposed by other funding sources and any costs attributing to Section 13(c) of the Federal Transit Act of 1964, as amended, the total of which is hereinafter referred to as "termination costs." If CITY has paid RPTA sums in excess of the termination costs, RPTA shall refund the excess; if CITY has paid RPTA an amount less than the termination costs, then CITY shall pay to RPTA an amount equal to the difference between the termination costs and the amount that CITY has already paid under this Agreement.

5.5 Additional Work

Additional work, when authorized by executed Contract Change Order or Supplement Agreement, shall be compensated for by a fee, mutually agreed upon by both parties.

5.6 Successors and Assigns

This Agreement shall not be assignable, except at the written consent of the parties hereto; and it shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

5.7 Title VI Assurances

The parties hereby agree that as a condition of this Agreement, they will comply with Title VI of the Civil Rights Act of 1964, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, to the end that no person in the United States shall, on the grounds of race, color sex or national origin be subjected to discrimination under any program or activity that receives federal assistance from the Department of Transportation, including the Federal Transit Administration.

SECTION 6: INDEMNIFICATION

Each party to this Agreement agrees to defend, indemnify, save and hold harmless the other (and each of their respective directors, officers, agents and employees) from and against all liabilities, suits, obligations, claims, demands, damages, fines, costs and expenses (including reasonable attorney's fees) arising under this Agreement to the extent that such are attributable, directly or indirectly, to the indemnifying party's negligence, error, omission or intentional act. An indemnifying party's negligence, error, omission or intentional act, as that phrase is used herein, includes the negligence,

error, omission or intentional act of its officers, agents and employees. This provision shall survive the termination of this Agreement.

SECTION 7: AMENDMENT

This Agreement may be amended in whole or in part by written agreement of the parties.

SECTION 8: RELATIONSHIP OF PARTIES

Each party to this Agreement shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other. Each party shall be solely and entirely responsible for its acts or the acts of its agents and employees during the performance of this Agreement.

SECTION 9: INTEGRATION

This agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

SECTION 10: ATTORNEYS' FEES

In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

SECTION 11: SEVERABILITY

If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

SECTION 12: NO ASSIGNMENT

This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other; provided, however, that RPTA may assign its rights and delegate its obligations hereunder to a successor in interest without obtaining such consent.

SECTION 13: WAIVER

Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

SECTION 14: COUNTERPARTS

This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof.

SECTION 15: CAPTIONS

Captions and section heading used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Agreement.

SECTION 16: CANCELLATION

This agreement is subject to cancellation pursuant to A.R.S. Section 38-511.

This Agreement shall be in full force and effect after it has been approved by the RPTA Board of Directors, after it has been executed by the duly authorized officials of the parties and after it has been filed with the County Recorder and the Secretary of State if necessary as provided by A.R.S. 11-952.

SECTION 17: NOTICES

Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If to RPTA:

Regional Public Transportation Authority
CITY OF PEORIA ADA 2008 10

302 North 1st Ave., Suite 700
Phoenix, Arizona 85003
(Attention: David A. Boggs, Executive Director)

If to CITY:

City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
(Attention Randy Roberts)

Notices shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either party may change its mailing address or the person to receive Notice by notifying the other Party as provided in this paragraph. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

SECTION 18: LEGAL WORKER REQUIREMENTS

The parties are prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, the parties agree that:

18.1 Both parties, and any applicable subcontractor each party uses, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214-(A).

18.2 A breach of warranty under paragraph 18.1 shall be deemed a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

18.3 The parties retain the legal right to inspect the papers of the contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that contractor or subcontractor is complying with the warranty under paragraph 18.1.

SECTION 19: IRAN AND SUDAN

Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. § 35-391 and 35-393, in either Sudan or Iran.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of _____, 2010.

By: _____
Bob Barrett
Mayor

By: _____
David A Boggs
Executive Director

ATTEST: _____
Peoria City Clerk

ATTEST: _____
Jon Medwin
Contracts and Procurement Manager

ATTEST: _____
Michael Taylor
Acting Deputy Executive
Director Finance

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. Section 11-952(D), each of the undersigned attorneys acknowledge that: (1) they have reviewed the above Agreement on behalf of their respective clients; and, (2) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

For the City of Peoria

Attorney for RPTA

SCHEDULE A

For the period of July 1, 2008 to June 30, 2009 it is estimated that the City of Peoria may request reimbursement from Regional Public Transportation Authority for a maximum of \$268,498.00 for service consumed by RPTA ADA certified paratransit riders in Peoria. Eligible ADA Paratransit expenses include only expenses associated with trips completed by passengers certified as ADA eligible using jurisdictionally approved alternatives to fixed route transit. This amount is contingent upon approval of RPTA's fiscal year 2008-2009 budget by the RPTA Board of Directors.

For the period of July 1, 2009 to June 30, 2010 it is estimated that the City of Peoria may request reimbursement from Regional Public Transportation Authority for a maximum of \$218,041.00 for service consumed by RPTA ADA certified paratransit riders in Peoria. Eligible ADA Paratransit expenses include only expenses associated with trips completed by passengers certified as ADA eligible using jurisdictionally approved alternatives to fixed route transit. This amount is contingent upon approval of RPTA's fiscal year 2009-2010 budget by the RPTA Board of Directors

Reimbursements must be requested by CITY on a PTF Reimbursement Request Form, Attachment A, and certified by the CITY's chief financial officer or designee. RPTA will reimburse CITY within thirty (30) business days based upon availability of funds. CITY may request that reimbursements be made electronically. Wire transfers must be pre arranged through the RPTA Finance Department.

Attachment A

**Regional Public Transportation Authority
PTF Expenditure Reimbursement Request**

The information provided will be used by the Regional Public Transportation Authority (RPTA) to monitor designated lead agency cash flow to ensure compliance with ARS 48-5103. No further monies may be paid out under this program unless this report is completed and filed as required.

RECIPIENT ORGANIZATION NAME AND ADDRESS	PROJECT AGREEMENT NUMBER	REQUEST NO.
	REPORTING PERIOD (Dates) FROM:	TO:

	TOTAL	PTF SHARE
TOTAL ELIGIBLE COSTS	\$ -	\$ -
TOTAL PREVIOUS PAYMENTS	\$ -	\$ -
CURRENT PAYMENT REQUESTED	\$ -	\$ -
REMAINING FUNDING	\$ -	\$ -

REQUIRED SIGNATURE

This document must be signed by the recipient's Chief Financial Officer or their designated representative.

CERTIFICATION

I certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures consistent with the project goals and requirements, have not been previously requested, and that payment is due. I also certify that all matching requirements have been met and sufficient documentation exists in our files and are available upon request or in the event of an audit.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

Instructions

1. Keep a copy of everything submitted.
2. All project records, including financial records, must be maintained for 3 years beyond project completion.

	<i>For RPTA use only</i>
Date request received:	Life cycle compliance review (signature/date)
Approved for funds availability	10 Date of funds transfer