

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____

Amend No. _____

Date prepared: March 12, 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 *WJM*
PREPARED BY: Maher Hazine, P.E. Deputy Public Works Director

SUBJECT:

Approve an Intergovernmental Agreement (IGA) for Paratransit On-Demand Shared Ride Service between the City of Peoria and the Regional Public Transportation Authority (RPTA).

RECOMMENDATION:

That the Mayor and Council approve an Intergovernmental Agreement (IGA) for Paratransit On-Demand Shared Ride Service Agreement between the City of Peoria and the Regional Public Transportation Authority (RPTA).

SUMMARY:

The City Of Peoria Transit Division currently provides Paratransit Service through the Dial-A-Ride program. The program utilizes City owned buses that are funded through various federal grants. In the recent months the City has been reviewing its service delivery based on current demands and available resources. Through this effort, the City has determined that delivery of portions of the service through other modes would be in the best interest of the City.

RPTA has an existing contract with Total Transit for delivery of on-demand shared ride, door-to-door transportation services for eligible clients. Currently this service is being provided by Total Transit through an on-demand Taxi-Service. This IGA simply allows the City of Peoria to utilize this service on an as-needed basis. This will be used to supplement our service to maximize its efficiency and meet current demands. This will not replace our current service. Funding for this service will be provided from salary savings resulting from existing vacant position(s).

Staff recommends approval of this ADA Paratransit Service Agreement between the City of Peoria and RPTA to provide reimbursement to Regional Public Transportation Authority for

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: _____

an amount not to exceed \$48,500

ATTACHMENT: Paratransit On-Demand Shared Ride Service Agreement.

AGREEMENT NO. 151-32-2010

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
AND
THE CITY OF PEORIA**

(Funding Agreement – On-Demand Shared Ride Transportation Services FY-10)

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this 1st day of April, 2010, by and between the Regional Public Transportation Authority, a public agency duly organized and existing under the laws of the State of Arizona (hereinafter referred to as the “RPTA”) and the City of Peoria, a municipal corporation duly organized and existing under the laws of the State of Arizona (hereinafter referred to as the “CITY”).

RECITALS

WHEREAS, the RPTA is a political subdivision of the State of Arizona, i.e., a public improvement district, established for the purpose of planning and providing public transportation services ARIZ. REV. STAT. §48-5102; and,

WHEREAS, the RPTA is authorized to contract for the provision of public transportation services pursuant to ARIZ. REV. STAT. §§ 48-5122 and 48-5123; and,

WHEREAS, the CITY is authorized to contract for the provision of public transportation services pursuant to the Peoria City Code and ARIZ. REV. STAT. § 11-952; and,

WHEREAS, the CITY requires certain paratransit and related passenger assistance services for its citizens; and,

WHEREAS, the RPTA currently contracts with Total Transit, Inc., an Arizona corporation, to provide certain fixed route and paratransit (demand-responsive) transportation services; and,

WHEREAS, the RPTA has authority pursuant to its procurement rules and regulations to amend its contract with Total Transit, Inc. (“Contractor”) to provide paratransit and passenger assistance services to the CITY’s citizens (the “Services”); and,

WHEREAS, the 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 sums set forth herein have been approved for disbursement in CITY’s and RPTA’s annual budgets; and,

WHEREAS, the CITY and the RPTA desire to enter into this Agreement to set forth their respective rights and obligations with respect to the implementation of the Services.

NOW, THEREFORE IT IS AGREED by and between the parties, as follows:

SECTION 1. UNDERTAKINGS OF THE PARTIES.

A. CITY's Obligations. CITY shall:

1. The CITY's Transit Supervisor shall approve and designate each passenger receiving paratransit services administered by the RPTA and the CITY's financial responsibility shall extend only to those passengers referred to RPTA by the CITY's Transit Supervisor.
2. The CITY shall designate "allowed trips" for each passenger. Reservations for "allowed trips" for designated passengers shall be made at least one day in advance of service.
3. In exchange for the Services, the CITY shall pay RPTA monthly for any Services provided at the costs as set forth in the Cost Schedule, attached hereto as Exhibit A and incorporated herein by reference, not to exceed a total aggregate amount of \$48,500.00 over the term of this Agreement. There is a 5% administrative fee that is billable to the CITY on a per invoice basis. The 5% is inclusive of the total aggregate amount of \$48,500.

B. RPTA's Obligations. RPTA shall:

1. a. Negotiate and coordinate the implementation of any operating agreements.
- b. Provide the Services directly or contract through a qualified subcontractor or third-party provider for the provision of the Services. The Services shall include door-to-door paratransit and passenger assistance services.
- c. Plan for, prepare changes, and amend service specifications.
- d. Invoice CITY on a monthly basis for CITY's cost of the Services. Specifically, the RPTA shall charge the CITY for each trip provided to a registered and approved CITY passenger at the rates set forth in the Cost Schedule attached hereto as Exhibit A.

- e. Ensure that all Contractor's staff have received Americans Disabilities Act (ADA) training
 - f. Ensure that all Contractor's staff have received sensitivity training
2. At the end of each calendar quarter, RPTA shall conduct a financial reconciliation of all costs of the program of service for informational purposes only. At the end of the fiscal year, a final reconciliation will be performed. If it is found that CITY has paid more than its share of the costs for Services, RPTA shall credit such overpayment to CITY. If it is found that the CITY has paid less than its share of the costs for Services, the CITY shall pay the amount of the deficiency within thirty (30) days.
 3. The RPTA and the CITY may conduct service and financial audits, as required, of the On-Demand Shared Ride Transportation Services Program.
 4. RPTA may charge the City up to a five (5) percent fee for administration services based upon the monthly invoice (net of any fares charged to passengers) sent to City.
 5. The RPTA shall provide written performance reports to the CITY no later than the 15th day of the following month during the term of this Agreement.
 6. The reports shall include at a minimum:
 - a. Name of each passenger.
 - b. Number of trips taken by passenger.
 - c. Direct distance of trips by passenger.
 - d. Origin and destination of passengers transported.
 - e. Cost of each trip.
 - f. Passenger Fare Paid (if any).
 - g. Pick up and appointment on time percentage.
 - h. Number and classification of complaints.
 - i. No shows, cancel at door, or missed trips (vehicle arrives late and passenger does not go).

7. The RPTA, through its Contractor, will be responsible for administering an in-demand passenger transportation service, including ADA eligible services for designated residents of the CITY.

SECTION 2. STATUTORILY REQUIRED PROVISIONS.

- A. Duration. This Agreement shall commence on execution date of this Agreement, and shall terminate on June 30, 2010 (the “Initial Term”), unless terminated earlier by either party pursuant to the terms of this Agreement.
- B. Renewal. This Agreement may be extended by mutual consent of the parties hereto on an annual basis for up to an additional five (5) one year terms.
- C. Budget; Appropriation of Funds. Funding levels for this Agreement shall be determined annually and shall be incorporated into this agreement annually by written amendment. Each year of this Agreement, the budget amount will be based on available funds and the budget will be renegotiated. If the parties are unable to agree upon a Budget, this Agreement shall terminate for the year for which a Budget is not approved. The provisions of this Agreement for implementation of the Services by both parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available to each party. Each party shall be the sole judge and authority in determining the availability of funds under this Agreement and shall keep the other party fully informed as to the availability of funds for the Services; provided, however, that the obligation of each party to make any payment pursuant to this Agreement is a current expense of each party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of either party. In the event that insufficient funds are appropriated by City, RPTA may terminate this Agreement without further recourse, obligation or penalty.
- D. Purpose. The purpose of this Agreement is to set forth the rights and obligations with respect to the provision of the Services.
- E. Termination. Either party may terminate this Agreement, with or without cause, upon 30 calendar days’ written notice to the other party at the addresses indicated below, and, upon such termination, all property used in connection with this Agreement will be promptly returned to the party holding title thereto. The written notice specified in this subsection shall specify the extent to which performance of work under this Agreement is terminated, and the date upon which such termination becomes effective. Notwithstanding such termination, each party shall be compensated for Services delivered prior to termination.
- F. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the parties each certify that they do not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term “scrutinized business

operations” shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If either party determines that the other party submitted a false certification, the party making such determination may impose remedies as provided by law including terminating this Agreement.

SECTION 3. GENERAL PROVISIONS.

The following provisions are material and essential to the parties’ entry in to this Agreement. A breach of any of the provisions of this Section shall constitute a material breach of contract:

- A. Entire Agreement; Modification (No Oral Modification). This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter, including the MOU. This Agreement, and its terms, may not be modified or changed except in writing signed by both parties.
- B. Invalidity of Any Provisions. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.
- C. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
- D. Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARIZ. REV. STAT. § 38-511.
- E. Non-waiver. Should either party fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of the terms or provisions thereof.
- F: Legal 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:
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).

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.

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.

- G. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (3) given to a recognized and reputable overnight delivery service, to the address set forth below or (4) delivered by facsimile transmission to the number set forth below:

If to Peoria: City of Peoria
Public Works–Utilities D Office
9875 W. 85th Ave
Peoria, Arizona 85345
Attn: William Mattingly
Facsimile: (623) 773- 7223

With copy to: City of Peoria
City Attorney’s Office
8401 W. Monroe Street
Peoria, Arizona 85345
Facsimile: (623) 773- 7045

If to RPTA: Regional Public Transportation Authority
302 North First Avenue, Suite 700
Phoenix, Arizona 85003
Attn: David A. Boggs, Executive Director
Facsimile: 602-495-0411

With a copy to: Jon Medwin
302 N. 1st Ave., Suite 700
Phoenix, Arizona
Facsimile: 602-495-0411

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the party, (2) ten business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (3) on the second business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver no later than the second business day or (4) when received by facsimile

transmission or e-mail during the normal business hours of the recipient, with proof of delivery. Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address; provided, however, that such duplicate notice shall not change the effective date of the notice sent by facsimile transmission. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice. 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, FAX number, or the person to receive notice by notifying the other party as provided in this subsection.

H. Indemnification. Each party to this Agreement agrees, to the extent permitted by law, to defend, indemnify and hold harmless the other party to this Agreement and any of their respective directors, officers, agents and employees for, from and against any and all claims, liabilities, suits, causes of action, obligations, demands, damages, fines, costs and expenses (including reasonable attorneys' fees) arising under this Agreement or which may be imposed upon, incurred by or asserted against them or any of their respective directors, officers, agents and employees attributable, directly or indirectly, to or arising in any manner by reason of the indemnifying party's negligence, error, omission or intentional misconduct. An indemnifying party's negligence, error, omission or intentional misconduct, as that phrase is used herein, includes the negligence, error, omission or intentional misconduct of its directors, officers, agents and employees. This provision shall survive the termination of this Agreement.

I. E-Verify, Records and Audits.

1. The Federal Transit Administration (FTA), the Arizona Department of Transportation, the Comptroller General of the United States, RPTA, the CITY, 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.

2. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The parties each retain the legal right to randomly inspect the papers and records of the other party and the other party's subcontractors who work under this Agreement to ensure that the other party and its subcontractors are complying with the above-

mentioned warranty. The parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties and their respective subcontractors shall cooperate with the other party's random inspections including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

- J. 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.

- K. Alteration in Character of Work. Minor alterations in the character of work shall be authorized in writing by RPTA and acknowledged in writing by the CITY Manager.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“CITY”

CITY OF PEORIA, an Arizona
municipal corporation

Carl Swenson, City Manager

ATTEST:

Mary Jo Waddell, City Clerk

“RPTA”

REGIONAL PUBLIC,
TRANSPORTATION AUTHORITY, an
Arizona public agency

David A. Boggs, Executive Director

ATTEST:

Jon Medwin, Contracts and Procurement
Manager

REVIEWED BY:

Michael Taylor, Acting Deputy Executive
Director Finance

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of §11-952(D), Arizona Revised Statutes, each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, 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.

Stephen M. Kemp,
City Attorney, City of Peoria

William J. Sims, Esq.
RPTA Attorney

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
AND
THE CITY OF PEORIA

SCOPE OF WORK

RPTA through its CONTRACTOR shall provide shared-ride, door-to-door transportation services for eligible City of Peoria clients. The City will provide a list of clients eligible for the service. The list of eligible clients will be updated on a monthly basis by City. RPTA through its CONTRACTOR will be responsible for receiving, through its phone center utilizing its equipment, all service requests. CONTRACTOR will be responsible for all trip routing and dispatching.

General Operating Parameters

The following general service operating parameters shall be adhered to:

- All trips shall be based on a shared-ride concept when possible.
- CONTRACTOR shall provide assisted door-to-door service for each and every passenger transported. Generally speaking, first floor access points are considered door-to-door, including foyers, office entrances, elevators, and stairways.
- The CONTRACTOR assumes responsibility for passengers in the completion of their trip making. By the nature of this service, the CONTRACTOR will find that on occasion passengers may require additional help in order to complete their trip through additional passenger assistance. When necessary, a supervisor should be made available to assist in this process in order to facilitate trip making and passenger need. If passengers continually need assistance outside of the ability of the service to provide, then the CONTRACTOR shall contact RPTA to notify the passenger that the situation needs to be remedied via an assistant or care giver.

Specific Operating Parameters

The following specific service operating parameters shall be adhered to:

- During the initial call for service, passengers must designate point of origin, point of destination, mobility capability, service animal and/or number of persons in

party. The Contractor shall verify pickup or requested time, drop off time, verify origins, destinations, telephone number at return pickup or cell phone number, the place of pickup, mobility devices, companions or Personal Care Attendant (PCA), use of service animal and fare for each trip including transfer fares, any restrictions, special assistance, or any other information necessary to complete the trip successfully. Passengers will be allowed at least one companion and on PCA.

- Contractor shall advise passengers of the estimated time of pickup.
- The Contractor will actively identify and recommend travel alternatives by analyzing trip requests in comparison to fixed route services available within the parameters of the trip request. When such alternatives are available, the Contractor will provide the caller with the information necessary to complete the trip in that fashion.
- The Contractor is encouraged to develop service routes and organize group trips in a way that facilitates recurring service needs on the part of passengers and/or caregiver facilities. These service routes shall not be exempt from Contractor performance standards.
- The Contractor shall be responsible to cooperate with other services and Contractors in the completion of all trips for passengers entering or exiting the defined service area. Direct communications, including telephone and/or radio communications, are required to facilitate transferring or other immediate trip making needs.
- The Contractor will provide both pre-scheduled and real-time dispatch service, with an emphasis on day-before scheduling of trips. All eligible passengers whether or not certified as ADA eligible, will be provided same-day real-time demand-response service on a space-available basis.
- The Contractor may negotiate pickup times for advance reservation trips. Trips rescheduled or cancelled by the Contractor are not late trips if contact has been made with the passenger in advance of the time promised and a new time mutually agreed upon. Calculations will be based on ALL pickup times recorded in an electronic database by examining the trip records throughout the month.
- Contractor shall maintain trip records to show the number of passengers, points of trip origin and destination, time of pickup and discharge of each passenger, time each call is received, fare collected, disposition if pickup is not made, and circumstances surrounding any unusual or improper occurrences taking place during the course of any passenger trip (incident reports). Contractor shall maintain data on types of passenger.
- The Contractor's drivers shall assist in loading and unloading all passengers and/or their wheelchairs or other equipment, and in loading and unloading parcels or personal effects from the vehicle for passengers requesting assistance. Drivers will assist passengers in carrying their personal effects to the door (up to four paper-grocery-sized bags or six plastic-grocery-size bags), but under no circumstances will a driver enter the private residence of any passenger for any reason.

- The Contractor's drivers shall collect the appropriate fare from each passenger at the time of pickup. Companions will pay the regular fare and PCA will ride free.

Service Expenses

Gross expenses for eligible participants shall be calculated as follows:

Passenger Type	Pick Up Fee	Mileage Fee per Mile
Ambulatory	\$3.40	\$2.20
Non-Ambulatory	\$ 28.50	\$2.20

Monthly Reports and Invoices

The contractor shall invoice RPTA only for trips made by City determined eligible participants. The contractor shall invoice VM/RPTA net expenses.

The monthly invoice must detail the following items:

- Number of miles by community of participants' residence
- Number of total trips provided
- Gross cost detailed by ambulatory and non-ambulatory (pick up fees)
- Gross cost for mileage fee
- Fares collected
- Net program cost
- Number of trips requests received
- Passenger name, pick up point, drop off point, fare paid by client
- A 5% RPTA Administrative fee will be added to each invoice, as referenced in this agreement

The contractor will provide quarterly electronic reports with the following passenger trip information:

- Passenger Name
- Pick up address
- Pick up actual arrive time
- Pick up actual depart time
- Drop off address
- Drop off actual arrive time
- Drop off actual depart time
- Number of companions
- Number of PCA's
- Mobility devices
- Service animals