



FAMILY AND COMMUNITY SERVICES

Date: August 23, 2010

To: Delia Briones, County Clerk

From: Rosemary Neill

Re: Commissioners Court Agenda

Please place the following item on the Commissioners Court agenda for August 30, 2010:

Approve and authorize the County Judge to execute an Intergovernmental Agreement (KK-10-366) with the New Mexico Department of Transportation (NMDOT) for the continued provision of Intercity Bus Service serving El Paso, Anthony, Texas and Las Cruces in Fiscal Year 2011.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Rosemary V. Neill", is written over a faint, larger version of the same signature.

Rosemary V. Neill

Director

Memorandum

To: County Judge Anthony Cobos, Commissioner Anna Perez,
Commissioner Veronica Escobar, Commissioner Willie Gandara Jr., and
Commissioner Daniel Haggerty

From: Rosemary Neill, Director, Family & Community Services Department

Date: 8/26/2010

Re: **Regular Agenda Item** for August 30, 2010, Commissioners Court
Meeting

Action Item

Approve and authorize the County Judge to execute an Intergovernmental Agreement (KK-10-366) with the New Mexico Department of Transportation (NMDOT) for the continued provision of Intercity Bus Service serving El Paso, Anthony, Texas and Las Cruces in Fiscal Year 2011.

Fiscal Impact

Funding for this project will be provided by the Texas Department of Transportation (TxDOT) in the amount of \$387,848 and NMDOT in the amount of \$514,124. No County funds will be required.

Background Information

Approval of this item will authorize the County Judge to execute an Intergovernmental Agreement (KK-10-366) with NMDOT in a joint project with the NMDOT Transit and Rail Division to continue Intercity Bus Service connecting El Paso, Anthony, Texas and Las Cruces. The service will continue with buses operating between downtown El Paso, the Sun Metro Westside Terminal, Anthony, Texas, New Mexico State University (NMSU) and the City of Las Cruces downtown bus terminal. The service operations will be managed by NMDOT and operated by their current contracted vendor, All Aboard America, for its NMDOT Park and Ride

express intercity bus service. All Aboard America's southern NMDOT Park and Ride base of operations is located in El Paso.

The service provides transportation in both peak directions on weekdays, allowing passengers to commute to El Paso, Anthony, Texas and Las Cruces for 7:00 AM – 8:30 AM work and school times. Both directions have 5 trips in the AM and 5 trips in the PM. This allows for a capacity of at least 1140 peak direction seats daily on the 57-passenger ADA accessible and bathroom-equipped motor coaches utilized for this service. One trip in both the AM and the PM interlines with the express Park and Ride Silver Route presently operating between Las Cruces and White Sands Missile Range. The fare is \$3 each way with monthly passes available for \$90. There is no service on weekends or holidays.

Bob Geyer, El Paso County Transportation Manager, will manage this contract for the County. Attached for your review are a copy of the Interlocal Agreement (KK-10-366) and a Legal Review Form from the County Attorneys Office.

Original 4 of 4
El Paso County

This Intergovernmental Agreement, is entered into this _____ day of _____, 2010, between the State of New Mexico acting by and through its Department of Transportation (hereinafter referred to as the DEPARTMENT or Party) and the County of El Paso, Texas (hereinafter referred to as the COUNTY or Party), and jointly “Parties”.

WHEREAS, the DEPARTMENT, owns and by and through its Contractor operates the DEPARTMENT’S public transportation system known as New Mexico Park and Ride (hereinafter referred to as “Park and Ride”); and

WHEREAS, this influx of traffic is a major cause of congestion, noise, and air pollution, and places a significant burden on both DEPARTMENT and COUNTY resources. In addition, there are many more residents of El Paso County, Texas whose access to the transportation required to go to Doña Ana County, New Mexico, is either limited or completely restricted; and

WHEREAS, each week, residents of Doña Ana County, New Mexico, also drive into El Paso County for various reasons. This too, is a major cause of congestion, noise, and air pollution, and places a significant burden on both DEPARTMENT and COUNTY resources. In addition, there are many more residents of Doña Ana County, New Mexico, whose access to the transportation required to go to El Paso County, Texas, is either limited or completely restricted; and

WHEREAS, the Parties have determined that, in order to alleviate traffic congestion, noise and pollution, and encourage the use of public transportation, it is in their best interest to cooperate in providing affordable public transportation between El Paso County, Texas, and Doña Ana County, New Mexico; and

WHEREAS, cooperating to provide affordable public transportation is in the Parties' best interest and that of the public and this agreement will increase the effective and efficient functioning of each party; 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, the COUNTY is a local government as defined in Texas Government Code, Section 791.003(4), has the authority to enter into this agreement, and has entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, §11-1-1, et. seq., NMSA 1978, establishes that the DEPARTMENT may enter into agreements of this type.

NOW THEREFORE, in consideration of the premises, and of the terms, provisions, and mutual promises herein contained, the Parties mutually agree as follows:

ARTICLE ONE

Contractual Relationship; Nature of Agreement

1.1 The DEPARTMENT and the COUNTY are agents of the State of New Mexico, and the State of Texas, respectively. 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 nor shall either Party attempt to assert the authority to make commitments for or to bind the other Party to any obligation.

1.2 The Parties expressly agree that this Agreement is not a contract for charter transportation, and is not intended to create any obligation to transport passengers under any terms or conditions different from those applicable to the general public.

ARTICLE TWO

Service, Vehicles, Stops and Fares

2.1 Service. The DEPARTMENT hereby establishes a Park and Ride Service for the exclusive purpose of travel by the general public with stops in El Paso County, Texas, and stops in Doña Ana County, New Mexico. Service shall not be provided by the DEPARTMENT on weekends or on currently recognized, or later declared, national holidays. Service may be changed by the DEPARTMENT with thirty (30) days prior written notice to the COUNTY.

2.2 Vehicles. The vehicles to be used in furtherance of this agreement are to be of the type currently in use by the Department's Park and Ride; typically, a fifty-seven (57) passenger over the road coach with the capacity to seat two (2) passengers utilizing wheelchairs.

2.3 Stops. Establishing bus stops shall be the sole responsibility of the DEPARTMENT which shall consult with the COUNTY regarding appropriate locations of the bus stops.

2.4 Fares. Charges for one-way fares and monthly passes shall be consistent with charges for fares and passes in other sectors of the DEPARTMENT's Park and Ride service. The DEPARTMENT may change the fares charged with 30 days prior written notice to the COUNTY.

ARTICLE THREE

Invoicing and Share of Costs, Payment Costs of Extensions Separately Negotiated, Recalculation in the Event of Termination Mid-month

3.1 Invoicing and Share of Costs. The DEPARTMENT shall bill the COUNTY \$32,320 monthly for the first eleven months of the Term of the agreement and \$32,328 for the last month of the Agreement. Billings by the Department in the amounts stated herein shall serve as the COUNTY's share of the costs of the Service between El Paso County, Texas, and Doña Ana County, New Mexico.

3.2 Payment. The COUNTY shall make payment to the DEPARTMENT within thirty (30) days of receipt of each monthly invoice by the DEPARTMENT.

3.3 Costs of Extensions Separately Negotiated. The costs for any extensions to this agreement shall be separately negotiated.

3.4 Recalculation in the Event of Termination Mid-month. In the event this agreement is terminated within any month prior to August 31, 2011, the payment owed by the COUNTY for the final month of service shall be pro-rated to reflect the actual number of days in which service is provided in that month.

ARTICLE FOUR

Compliance with Laws

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

ARTICLE FIVE

Governmental Function, Damages, Risk Allocation

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 New Mexico 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 DEPARTMENT 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 DEPARTMENT 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.

ARTICLE SIX

Effective Date, Term, and Termination

- 6.1 Effective Date.** The Effective Date of this Agreement shall be September 1, 2010.
- 6.2 Term.** The Term of this Agreement shall be September 1, 2010 through August 31, 2011.
- 6.3 Termination.** Either party may terminate this Agreement upon sixty (60) days written notice to the other party.

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.

ARTICLE EIGHT

Disputes and Remedies

- 8.1 Governing Law.** This contract shall be governed by the laws of the State of New Mexico and venue shall lie in the County of Santa Fe, New Mexico for any cause of action

arising in the State of New Mexico, and shall be governed by the laws of the State of Texas and venue shall lie in the County of El Paso, Texas for any cause of action arising in the State of Texas.

8.3 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.

8.4 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.

Each person signing below attests to having read this Agreement in its entirety (including any and all Attachments); to understanding the terms of this Agreement; to being duly authorized to execute this Agreement on behalf of the Party indicated below; and agrees on behalf of such Party that such Party will be bound by those terms.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below specified.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Max E. Valerio, P.E.
Deputy Cabinet Secretary of Programs and Infrastructure

Approved as to form and legal sufficiency by Department's Office of General Counsel

By: _____ Date: _____
Javier Lopez, Assistant General Counsel

COUNTY OF EL PASO, TEXAS

Anthony Cobos, County Judge

ATTEST:

APPROVED AS TO CONTENT:

Delia Briones, County Clerk

Bob Geyer, Transportation Manager
El Paso County

APPROVED AS TO FORM:

Janet I. Monteros
Assistant County Attorney

From: Bob Geyer

Sent: Sunday, August 22, 2010 3:48 PM

To: Rosemary Neill

Cc: Bob Geyer

Subject: Legal Review Form KK-10-366 - NMDOT Interlocal Agreement 8/30/Agenda

From: Janet Monteros

Sent: Tuesday, August 03, 2010 11:14 AM

To: Josefina Vasquez; Bob Geyer

Cc: Alicia Vera

Subject: RE: Agenda Item Commissioners Court - August 16, 2010 - NMDOT Interlocal Agreement

COUNTY LEGAL REVIEW FORM

KK-10-366

Contract Description: **County/NMDOT Interlocal/El Paso and Las Cruces Bus Svc**

COUNTY ATTORNEY ACTION**

****Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

_____X_____ Approved as to Form as Submitted

_____ Approved as to Form with Amendments/Modifications/Reservations Noted Below*

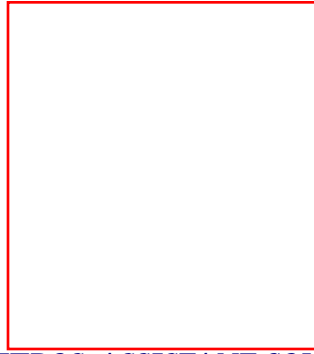
_____ Not Approved

*1)

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

Janet Monteros

Assistant County Attorney



JANET I. MONTEROS, ASSISTANT COUNTY ATTORNEY
General Counsel Unit
EL PASO COUNTY ATTORNEY'S OFFICE
500 E. San Antonio, Ste. 503
El Paso, Texas 79901
915-546-2050 ext. 3209
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From: Josefina Vasquez
Sent: Tuesday, August 03, 2010 10:14 AM
To: Bob Geyer
Cc: Janet Monteros; Alicia Vera
Subject: FW: Agenda Item Commissioners Court - August 16, 2010 - NMDOT Interlocal Agreement

Mr. Geyer:

The above Interlocal has been assigned to ACA Janet Monteros for review under number KK-10-366.

Thank you,

Josie Vasquez
Josefina Vasquez
Secretary, General Counsel Unit
El Paso County Attorney's Office
500 E. San Antonio, Room 503
El Paso, Texas 79901
(915) 546-2081, ext. 3210

From: Lee Shapleigh
Sent: Tuesday, August 03, 2010 9:44 AM
To: Alicia Vera; Josefina Vasquez
Cc: Janet Monteros
Subject: FW: Agenda Item Commissioners Court - August 16, 2010 - NMDOT Interlocal Agreement

Please assign to Janet. Due date 8/10.

From: Bob Geyer
Sent: Monday, August 02, 2010 6:09 PM
To: Lee Shapleigh
Cc: Bob Geyer
Subject: Agenda Item Commissioners Court - August 16, 2010 - NMDOT Interlocal Agreement

Lee, Please prepare a Legal Review Form for the attached Interlocal Agreement with NMDOT for the provision of bus service between El Paso and Las Cruces with a stop in Anthony. This agreement is similar to the agreement that was approved by Commissioners Court on August 24, 2009 (K-09-303). I intend to place this contract on the Commissioners Court agenda on August 16, 2010. Please contact me should you have any questions. Thanks!

Bob Geyer
Transportation Manager
El Paso County
800 E. Overland, Room 208
El Paso, Texas 79901
915-834-8242
915-532-4563 (Fax)
bgeyer@epcounty.com