

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: October 8, 2024
PUBLIC HEARING DATE: N/A

**CONTACT PERSON(S) NAME
AND PHONE NUMBER:** Anthony R. DeKeyzer, Director of Mass Transit, (915) 212-3306
Jerry DeMuro, Deputy Transit Officer, (915) 212-3470

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: 7.3 – Enhance a regional comprehensive transportation system

SUBJECT:

Discussion and action on a Resolution **authorizing** the Mayor to sign an Interlocal Agreement by and between **City of El Paso, the El Paso Area Transportation Services, and the County of El Paso**, to provide paratransit service users within their jurisdiction the opportunity to travel to and from the Service areas with minimal interruptions and as effortlessly as possible to increase the efficiency and effectiveness of the transit system within the region.

BACKGROUND / DISCUSSION:

An Interlocal Agreement is necessary to define how eligible customers that reside within El Paso city limits, and those that reside outside city limits, are provided with paratransit service by the City of El Paso (Sun Metro LIFT) and El Paso County (County Transit ETA), without the need for transfer at Sun Metro transit centers. The City and El Paso County, along with its affiliated local government corporation, El Paso Area Transportation Services, agree to provide services to their own residents, from origin to destination, regardless if a trip enters or exits El Paso city limits. The term of the agreement will automatically renew for one year on the anniversary of execution, unless terminated by the parties.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Sun Metro

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Anthony DeKeyzer

Name

Anthony R. DeKeyzer

Signature

10-04-24

Date

RESOLUTION

WHEREAS, pursuant to 49 CFR Part 37, the City of El Paso (“**City**”) and the County of El Paso (“**County**”) each own, maintain, and/or operate a fixed route transit system and are required to provide a paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use their respective fixed route systems; and

WHEREAS, the City provides a Fixed Route Service and a Paratransit Service within its Service Area (“**City Service Area**”); and

WHEREAS, the County provides a Fixed Route Service and a Paratransit Service within its Service Area (“**County Service Area**”); and

WHEREAS, the County was instrumental in the creation of El Paso Area Transportation Services, a local government corporation organized and existing for the purpose of encouraging and assisting local units of government to join and cooperate with one another to provide and deliver regional multimodal transportation services (“**EPATS**”); and

WHEREAS, The County is a member of EPATS and has delegated to EPATS certain policy and operations decision-making authority over the County’s fixed route service and paratransit service; and

WHEREAS, the County, EPATS and the City wish to enter into an Interlocal Agreement to provide paratransit service users within their jurisdiction the opportunity to travel to and from the Service Areas with minimal interruptions and as effortlessly as possible to increase the efficiency and effectiveness of their respective paratransit services (“**Agreement**”); and

WHEREAS, the Agreement supports the public purpose of improving the transit system within the region and supporting a high quality of life for the El Paso community.

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

That, the Mayor be authorized to sign an Interlocal Agreement by and between **City of El Paso, the El Paso Area Transportation Services, and the County of El Paso**, to provide paratransit service users within their jurisdiction the opportunity to travel to and from the Service areas with minimal interruptions and as effortlessly as possible to increase the efficiency and effectiveness of the transit system within the region.

That, the City Manager or designee be authorized to accept, reject, alter, amend or terminate the resulting Interlocal Agreement.

That, the City Manager or designee be authorized to sign any related agreements, verifications and documents, after review from the City Attorney’s office, effectuate any budget transfers and submit necessary revisions to the operational plan, and take any actions necessary to carry out the intent of this resolution.

APPROVED this _____ day of _____, 2024.

MASS TRANSIT DEPARTMENT BOARD:

Oscar Leaser, Chairman

ATTEST:

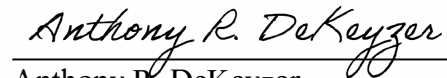
Laura D. Prine, Secretary

APPROVED AS TO FORM:



Joyce Garcia
Assistant City Attorney

APPROVED AS TO CONTENT:



Anthony R. DeKeyzer
Sun Metro/Mass Transit Department

STATE OF TEXAS }
 }
COUNTY OF EL PASO }

**INTERLOCAL AGREEMENT
FOR PARATRANSIT SERVICES**

This Interlocal Agreement ("Agreement") is entered into by and between the **City of El Paso, Texas ("CITY")**, a political subdivision of the State of Texas, the **County of El Paso, Texas ("COUNTY")**, a political subdivision of the State of Texas, and the **El Paso Area Transportation Services, Local Government Corporation ("EPATS")**, a Texas local government corporation organized and existing pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code, each individually referred to as "Party" and collectively referred to as "Parties," pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Furthermore, County and EPATS are collectively referred to as the "County Parties."

RECITALS

WHEREAS, pursuant to 49 CFR Part 37, the City and the County Parties each own, maintain, and/or operate a fixed route transit system and are required to provide a paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use their respective fixed route systems; and

WHEREAS, the City provides a Fixed Route Service and a Paratransit Service within its Service Area ("City Service Area"); and

WHEREAS, the County provides a Fixed Route Service and a Paratransit Service within its Service Area ("County Service Area"); and

WHEREAS, the County was instrumental in the creation of EPATS, a local government corporation organized and existing for the purpose of encouraging and assisting local units of government to join and cooperate with one another to provide and deliver regional multimodal transportation services; and

WHEREAS, The County is a member of EPATS and has delegated to EPATS certain policy and operations decision-making authority over the County's Fixed Route Service and Paratransit Service; and

WHEREAS, the Parties recognize the necessity to provide Paratransit Service Users within their jurisdictions the opportunity to travel to and from the Service Areas, but without this Agreement, such travel is not possible nor practical; and

WHEREAS, the Parties, through this Agreement, seek to implement a system whereby Paratransit Service Users can travel through the Service Areas with minimal interruptions and as effortlessly as possible to increase the efficiency and effectiveness of their respective paratransit services; and

WHEREAS, the Parties acknowledge and find that it is in the best interest of the public and Paratransit Service Users to cooperate in the provision of the Paratransit Service.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The above recitals are incorporated into this Agreement.
2. **Definitions.** As used throughout this Agreement, the following terms shall have the meaning set forth below:
 - a. “*ADA*” means the Americans with Disabilities Act of 1990, as it may be amended from time to time.
 - b. “*ADA Paratransit Eligible Identification*” means formal documentation provided to an individual stating that he or she is “ADA Paratransit Eligible.”
 - c. “*ADA Paratransit Eligibility Process*” means the process established for determining an applicant’s ADA paratransit eligibility.
 - d. “*City*” means the City of El Paso.
 - e. “*City’s Service Area*” means the geographic area where the City owns, maintains, and/or operates a fixed-route transit service and complementary paratransit services, including the City’s current Route 84, which runs from the Mission Valley Transfer Center to EPCC Mission del Paso Campus and Socorro at San Antonio in San Elizario via Americas Ave., Alameda Ave., and Socorro Rd., until such time as that route is terminated.
 - f. “*City Users*” means Paratransit Service Users who reside within the City’s Service Area and who the City has determined are ADA paratransit eligible through its formal eligibility application process and City Visitors. Any user with a current and valid Sun Metro Lift identification card is a City User.
 - g. “*County*” means the County of El Paso.
 - h. “*County Parties*” means the County of El Paso and EPATS, LGC.
 - i. “*County’s Service Area*” means the geographic area where the County Parties own, maintain, and/or operate a fixed-route transit service and complementary paratransit services.
 - j. “*County Users*” means Paratransit Service Users who reside within the County’s Service Area and who the County Parties have determined are ADA paratransit eligible through their formal eligibility application process and County Visitors. Any user with a current and valid EPATS or County Transit Access identification card is a County User.
 - k. “*Demand Responsive Service*” means any non-fixed route system of transporting individuals that requires advanced scheduling by the customer, including services provided by public entities, nonprofits, and private providers.
 - l. “*EPATS*” means the El Paso Area Transportation Services, Local Government Corporation.

- m. *“Fixed route system”* means a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.
 - n. *“Origin-to-Destination Service”* means providing service from a passenger’s origin to the passenger’s destination, without the need for transfer between Parties when entering or exiting the Service Areas.
 - o. *“Paratransit Service”* means the coordinating, implementing, and operating of ADA-compliant paratransit services for City Users, County Users, Visitors, and all other eligible Paratransit Service Users who are traveling to and from the City’s Service Area and the County’s Service Area, to include Origin-to- Destination Service, Demand-Responsive Service, and all other mutually agreed paratransit services, and also all related and necessary maintenance, compliance, customer services, administrative, and clerical services.
 - p. *“Paratransit Service Users”* means users of paratransit services under this Agreement who are ADA paratransit service eligible, including, but not limited to, City Users, County Users, and eligible Visitors.
 - q. *“Service Areas”* means the City’s Service Area and the County’s Service Area.
 - r. *“Stranded”* means a Paratransit Service User who has not been picked up for a scheduled and confirmed return trip to their point of origin and has been unable to receive a timely response from the Party responsible for transporting the Stranded Paratransit Service User.
 - r. *“Visitors”* means individuals with disabilities who do not permanently reside within the Service Areas.
3. **Purpose.** The Parties enter into this Agreement to cooperate with each other in coordinating, implementing, and operating the Paratransit Service within and between their respective jurisdictions and Service Areas with the goal of facilitating the travel of Paratransit Service Users to and from the City’s Service Area and the County’s Service Area.
- The Parties understand that providing the Paratransit Services will require flexibility to address the issues that will arise in the day-to-day operations of the Paratransit Service and agree to make a good faith effort to amicably and efficiently resolve all issues and disputes that may arise under this Agreement. Notwithstanding any provision in this Agreement to the contrary, each Party shall remain solely responsible for the ownership, maintenance, and/or operation of its transit systems.
4. **Term.** The initial term of this Agreement (“Initial Term”) shall begin upon execution by the last of the Parties to sign (“Effective Date”). This Agreement shall be for a term of one year and shall automatically renew on its anniversary date each year unless terminated earlier pursuant to the provisions of Section 5. The Parties may revise, modify, or amend this Agreement in accordance with Section 14.

5. Termination. This Agreement may be terminated as follows:

- a. The Parties may terminate this Agreement by a written agreement signed by all Parties setting forth the agreed termination date; or
- b. Any Party may terminate this Agreement with or without cause by providing written notice to the other Parties not less than sixty (60) days prior to the desired termination date; or
- c. Any Party may terminate this Agreement on the thirty-first (31st) day after providing written notice to any other Party that the other Party is in breach of its obligations under this Agreement, which notice shall describe the alleged breach with reasonable particularity, and the Party receiving the notice has failed to cure the alleged breach.
- d. If a federal, state, or local law or regulation affects or impairs any Party's ability to perform this Agreement, the Parties may renegotiate the terms of this Agreement so the affected Party can comply with the law or regulation. The affected Party shall provide the other Parties with written notice of the applicable law or regulation. Should a Party choose not to renegotiate, or should the law or regulation make it impossible for the affected Party to perform this Agreement, that Party may terminate this Agreement by providing fourteen (14) days written notice to the other Parties. Termination shall be effective on the fourteenth(14th) day after the day on which the notice is provided.
- e. Each Party reserves the right to seek payment for any services that it may have provided prior to the effective date of any termination of this Agreement.

6. Parties' Responsibilities. The Parties shall provide the Paratransit Service as follows:

- a. **Compliance with Laws:** The City and the County Parties shall comply with all applicable federal, state, and local laws and regulations, including those of the ADA and 49 CFR Part 37, as may be amended from time to time.
- b. **Private Entities:** The City and the County Parties may enter into a contractual or other arrangement with a private entity to provide the Paratransit Service, but the Party must ensure that the private entity meets and complies with all applicable federal, state, and local laws and regulations, including those of 49 CFR Part 37, as may be amended from time to time.

Paratransit Services: The City and the County Parties shall provide or cause to be provided the Paratransit Service to Paratransit Service Users in accordance with this Agreement's stated purpose and all of its terms and conditions. During the term of this Agreement, Each Party agrees to permit the other Party to provide the Paratransit Service within their respective Service Areas.

- c. **Paratransit Services for Visitors:** The City and the County Parties shall treat as eligible for the Paratransit Service all Visitors who present documentation that they are ADA paratransit eligible, under the criteria of 49 CFR § 37.125, in the jurisdiction in which they reside or who otherwise provide satisfactory documentation of their eligibility for paratransit services. Visitors shall be eligible for paratransit services for any combination of 21 (twenty-one) days

during any 365-day period beginning with the Visitor's first use of the paratransit service during such 365-day period. Visitors whose temporary residence is located within the City's Service Area shall be considered City Users; Visitors whose temporary residence is located within the County's Service Area shall be considered County Users.

- d. **Planning and Coordination:** The City and the County Parties shall have periodic meetings to discuss, plan, evaluate, change, and/or modify the Paratransit Service.
 - e. **Recordkeeping and Right to Inspect:** Each Party shall have mutual access to, and the right to examine, all books, documents, data, papers, and other records of any other Party involving transactions and operations relating to this Agreement.
 - f. **Stranded Paratransit Users:** A Stranded Paratransit Service User shall be allowed to request a trip to their point of origin by contacting Sun Metro LIFT if located in the City's Service Area or County Transit Access if located within the County's Service Area, regardless of which Party initially transported the Stranded Paratransit Service User. The Parties agree to cooperate with and assist each other by providing Paratransit Services to Stranded Paratransit Services
 - g. **Texas Public Information Act:** Each Party shall be responsible for complying with the provisions of the Texas Public Information Act, Chapter 552 of the Texas Government Code.
 - h. **HIPAA Compliance and Confidential Information:** Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), the Parties offer assurances to each other that they will safeguard any protected health information received or created in connection with this Agreement. The Parties further agree that they will take all necessary actions to comply with HIPAA and all other applicable privacy laws and regulations, which may include creating joint forms that will be accepted by the City and County Parties for purposes of determining eligibility for the Paratransit Service.
7. **Compensation, Payment Schedule, and Invoicing.** The Parties agree to address compensation, reimbursements, invoice submission and handling, and payment schedules in a mutually agreed upon manner consistent with their respective existing policies and procedures. Notwithstanding anything to the contrary in this agreement the Parties agree that:
- a. City agrees to provide the Paratransit Service to City Users at no cost to the County Parties.
 - b. County Parties agree to provide the Paratransit Service to County Users at no cost to the City.
 - c. City will reimburse the County Parties for all reasonable expenses incurred by the County Parties in providing the Paratransit Service to stranded City Users.
 - d. County Parties will reimburse the City for all reasonable expenses incurred by the City in providing the Paratransit Service to stranded County Users.
 - e. The County of El Paso will continue to pay the City for the transit service provided by Route

84. Nothing in this Agreement is intended to change or modify the terms of the interlocal agreement between the City and County of El Paso for the Route 84 transit service.

f. The Parties agree that all payments shall be made within 30 days of receiving an invoice.

8. **Fiscal Funding.** The Parties acknowledge that they are governmental entities of the State of Texas and agree that each Party shall have the right, upon the failure of its governing body to appropriate finances or secure funding to meet their obligations arising from this Agreement, to suspend or terminate this Agreement as of the effective date of such lack of funding. The Party exercising this right must provide the other Party with written notice of such funding failure as soon as possible.
9. **Insurance.** Each Party shall maintain, or otherwise arrange for, such insurance or participation in a self-insurance risk pool for governmental entities as each is required to maintain, or may otherwise deem reasonable and necessary, to effectuate the terms of this Agreement, but that a minimum meets their obligations and potential liability exposure under the Texas Tort Claims Act.
10. **TORT CLAIMS ACT.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement within the State of Texas is subject to the immunities and limitations of the Texas Tort Claims Act. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the Texas Tort Claims Acts. County Parties and its "public employees" as defined in the Texas Tort Claims Act, and the City and its "public employees" as defined in the Texas Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the Texas Tort Claims Act. This Section is intended only to define the liabilities of the Parties, and is not intended to modify in any way, the Parties' liabilities as pursuant to each Parties' applicable governing law.

This Agreement is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third-party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

11. **Governmental Function.** The Parties expressly agree that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. The Parties further expressly agree that every act or omission of the City, which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.
12. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in writing, postmarked, and delivered by certified mail, or by hand-delivery or email, with confirmed receipt if via email. All notices are considered received three (3) business days after the postmark date. Any Party may change its address by sending a written notice to the other Party. A new address is not official until the other Party receives the change of address notice as provided in

this section. Upon receipt of proper notification of change of address, the notified Party will send all further notifications to the new address. The Parties will address notices as follows:

To EPATS: Rio Grande Council of Governments
Attn: Annette Gutierrez
8037 Lockheed Dr.
El Paso, Texas 79925
Email: annetteg@riocog.org

With Copy to: Kemp Smith LLP
Attn: Sergio M. Estrada
221 N. Kansas, Suite 1700
El Paso, Texas 79901
Email: sest@kempsmith.com

To City: City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

And: Sun Metro
Attn: Director of Mass Transit/Sun Metro
10151 Montana Ave.
El Paso, Texas 79925
Email: dekeyzerar@elpasotexas.gov

To County: County
Attn: El Paso Transportation Authority
800 E. Overland Ave. Rm. 200
El Paso, Texas 79901
Email:

13. Governmental Immunity. The Parties do not waive, and neither Party shall be deemed to have waived, any immunity or defense that would otherwise be available to either Party and/or its elected officials, officers, employees, representatives, and agents under Federal or Texas law nor waive any defenses or remedies at law available to either party and/or its elected officials, officers, employees, and agents under Federal or Texas law.

14. Entire Agreement. This Agreement contains all representations, understandings, contracts, and agreements between the Parties regarding the Paratransit Service. This Agreement supersedes all oral or written previous and contemporaneous agreements, writings, understandings, representations, or contracts between the Parties regarding the Paratransit Service. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not regard the subject matter of this Agreement.

15. Amendment. The Parties may revise, modify, or amend this Agreement only by written agreement signed by both Parties.

16. **Successors and Assigns.** This Agreement is binding on the Parties and their successors and assigns. EPATS may assign this Agreement and its obligations under it in whole or in part to the County of El Paso, Texas, without obtaining the City's consent, provided that EPATS provides the City no less than thirty (30) days advance written notice of such assignment. City agrees to such assignment and agrees to release EPATS from any further liability under this Agreement as of the effective date of the assignment.
17. **Independent Contractor.** The Parties' relationship under this Agreement is contractual in nature between independent Parties and does not constitute, and shall not be construed, as creating a partnership or joint venture relationship between or among the Parties. Each Party will maintain sole control, supervision, and direction over its operations and the paratransit services provided under this Agreement.
18. **Force Majeure.** No Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by an act of God, an outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond any Party's reasonable control. The delayed Party must resume performing its obligations under this Agreement after the reason for the default or delay is resolved.
19. **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
20. **Governing Law.** This Agreement is governed by Texas law.
21. **Place of Performance and Venue.** This Agreement is performable in El Paso County, Texas, and any legal action between the Parties arising from it must be filed in El Paso County, Texas.
22. **Counterparts.** This Agreement may be signed in counterparts, and each executed copy shall be deemed a counterpart original, with full force and effect and enforceable against the Parties executing the same.
23. **Authority to Enter Agreement.** Each Party represents and warrants to the other that it is authorized to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective entities as duly authorized representatives thereof.

[Signatures begin on the following page.]

Signature page for the City of El Paso, Interlocal Agreement between the City of El Paso, El Paso Area Transportation Services and the County of El Paso.

APPROVED this _____ day of _____, 2024.

CITY OF EL PASO:

By: _____
Oscar Leaser, Mayor

ATTEST:

Laura D. Prine
City Clerk

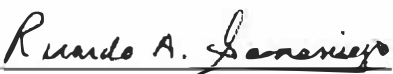
APPROVED AS TO FORM:

Joyce Garcia
Assistant City Attorney

APPROVED AS TO CONTENT:

Anthony R. Dekeyzer
Anthony Dekeyzer
Director Sun Metro / Mass Transit

COUNTY OF EL PASO:

By: 
Ricardo A. Samaniego, County Judge

APPROVED AS TO FORM:



Steven E. Arellano
Assistant County Attorney

APPROVED AS TO CONTENT:



Xavier Banales
Interim Director of Transit Operations

EPATS, LGC:

By: 
Carlos Leon, EPATS, LGC Board President

APPROVED AS TO FORM:

DocuSigned by:

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Sergio M. Estrada, Legal Counsel