

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

DEPARTMENT: Mass Transit Department

AGENDA DATE: July 10, 2018

CONTACT PERSON NAME AND PHONE NUMBER: Jay Banasiak, 915-212-3300

Strategic Goal 7: Enhance a regional comprehensive transportation system

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the Mass Transit Board and City Council of the City of El Paso authorize the corresponding authorization enabling the Mayor of the City of El Paso and the Chairman of the Mass Transit Department Board be authorized to sign an Intergovernmental Agreement with the City of Sunland Park, New Mexico, whereby the City shall provide public transportation services to, from, and within the city limits of Sunland Park, New Mexico at no expense to the City of El Paso,

BACKGROUND / DISCUSSION:

The Cities of El Paso and Sunland Park executed an intergovernmental agreement on February 8, 2011 to allow Sun Metro to provide service to and from Sunland Park and Sun Metro's downtown terminal for further transit connections as needed. The agreement provided that the service would be at no cost to the City of El Paso and would be funded principally through NMDOT funding obtained by Sunland Park. Texas Government Code allows for border municipalities of the State of Texas to enter into adjoining municipalities of adjoining states to furnish services to increase efficiencies and effectiveness.

PRIOR COUNCIL ACTION:

Last agreement approved in February 2011.

AMOUNT AND SOURCE OF FUNDING:

City of Sunland Park through NMDOT CMAQ funding grant.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:


(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO,

THAT the Mayor of El Paso be authorized to sign an Intergovernmental Agreement with the City of Sunland Park, New Mexico, whereby the City shall provide public transportation services to, from, and within the city limits of Sunland Park, New Mexico at no expense to the City of El Paso, and that the City Clerk be directed to file an executed copy of the Intergovernmental Agreement for record with the El Paso County Clerk.

APPROVED this _____ day of _____, 2018.


CITY OF EL PASO

Dee Margo, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:



Jay Banasiak, Director
Mass Transit Department

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

**INTERGOVERNMENTAL
AGREEMENT**

This Intergovernmental Agreement (“Agreement”) is between the **CITY OF EL PASO, TEXAS** acting by and through its Mass Transit Department Board hereinafter the “City” and the **CITY OF SUNLAND PARK, NEW MEXICO** hereinafter “Sunland Park”.

WHEREAS, Texas Government Code, Chapter 763.001 *et. seq.*, authorizes border municipalities of the State of Texas to enter into agreements with adjoining municipalities of adjoining states to furnish services to increase each municipality’s efficiency and effectiveness; and

WHEREAS, the New Mexico Municipal Code, NMSA 1978 §3-18-1(B) and the New Mexico Joint Powers Agreements Act, NMSA 1978 §11-1-3 authorize municipalities in New Mexico to enter agreements with public agencies within or outside of New Mexico with the approval of the Secretary of Finance and Administration; and

WHEREAS, the City of El Paso, Texas is a “border municipality” and the City of Sunland Park, New Mexico is an “adjoining municipality” pursuant to Texas Government Code § 763.001, and each party therefore has the authority to enter into this Agreement by the action of its governing body in the appropriate manner prescribed by the governing law of each party; and

WHEREAS, each week, residents of Sunland Park drive into El Paso for work, entertainment, family visits, and various other reasons. This influx of traffic is a major cause of congestion, noise, and air pollution, and places a significant burden on both City and Sunland Park resources. In addition, there are many other residents of Sunland Park whose access to the transportation required to go to the City of El Paso is either limited or completely restricted; and

WHEREAS, each week, residents of the City also drive into Sunland Park for work, entertainment, family visits, and various other reasons. This too, is a major cause of congestion, noise, and air pollution, and places a significant burden on both City and Sunland Park resources. In addition, there are many other residents of the City whose access to the transportation required to go to the outlying areas of Sunland Park is either limited or completely restricted; and

WHEREAS, the City, by and through its Mass Transit Department owns and operates the City’s public transportation system known as Sun Metro, which is managed by the Director of the Mass Transit Department for the City of El Paso; and

WHEREAS, the parties desire to enter into an agreement whereby the City will provide public transportation to, from, and within the city limits of Sunland Park; and

WHEREAS, the parties have determined that, a consolidated effort to coordinate public transportation would help alleviate traffic congestion, noise, pollution, and encourage the use of public transportation. The parties have further determined that additional benefits from the use of

public transportation will increase Sun Metro ridership, and provide substantial public education regarding alternatives to automobile travel; and

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

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

NOW THEREFORE, in consideration of the premises, and of the terms, provisions, and mutual promises herein contained which fairly compensate the performing party, it is mutually agreed as follows:

ARTICLE ONE

Contractual Relationship; Nature of Agreement

1.1 The purpose of this Agreement is to provide mass transportation services to, from, and within the city limits of Sunland Park, New Mexico by the Mass Transit Department of the City of El Paso, Texas.

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

1.3 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 other Sun Metro passengers, other than those terms expressly agreed to below.

1.4 For purposes of Texas Government Code, §763.003(c), and as the City is the provider of services in this Agreement, the Director of the Mass Transit Department of the City of El Paso, hereinafter the "Director", shall be the administrator of this Agreement. Further, no property shall be acquired, held or otherwise disposed of pursuant to this Agreement, other than that equipment owned and operated by the City in the furtherance of the normal operating procedures of a mass transit provider. Should any property be purchased under this Agreement, then the purchaser of such property will retain ownership of the property after the termination of this Agreement.

ARTICLE TWO

Fixed Route Service

2.1 Service. The City hereby establishes a Fixed Route Service to areas within Sunland Park, New Mexico for the exclusive purpose of travel by passengers to and from Sunland Park with stops developed as set out below, and shown in **Attachment "A"**, which is incorporated herein by reference for all purposes. The parties may agree in writing to establish additional route services which will be governed by this Agreement. The parties may agree in writing to amend the Fixed Route Service. The proposed route extension marked in red on Attachment "A" will only operate during peak hours, on weekends, and with a maximum of 6 trips as determined by the Sunland Park City Council.

2.2 Estimated Cost. The City shall provide the Fixed Route Service by utilizing Sun Metro vehicles at an estimated cost of \$73.60 per Revenue Hour. The term "Revenue Hour" includes all operational and maintenance costs, including all liability insurance. It is expressly agreed and understood by all parties that the City shall not expend any of its own funds in the delivery of such services.

2.3 Fares. For regular, Fixed Route Service, as outlined in **Attachment A**, fares shall be sold at a rate as periodically set by the City through a resolution approved by the Mass Transit Board. For purposes of this Agreement, the current fares adopted by the City are attached as **Attachment B**. The City will notify Sunland Park at least 30 calendar days in advance of any proposed changes to the fare rates. The City will update Attachment B following the approval of any changes to the fare rates by the Mass Transit Board. No formal amendment of this Agreement is required for updating Attachment B pursuant to this Section.

2.4 Transfers. Transfers shall be made available from Sunland Park Fixed Route Service to the existing City service within the city limits. Such transfers shall be made available at a rate as periodically set by the City through a resolution approved by the Mass Transit Board and shall be purchased upon admittance to an existing City Fixed Route, in accordance with current City practice. All revenue generated by the sale of such transfers shall be considered Sunland Park generated funds and shall be segregated in accordance with Section 4.2 below. In addition, transfers shall be made available from the existing City service to Sunland Park Fixed Route Service. Such transfers shall also be made available at a rate as periodically set by the City through a resolution approved by the Mass Transit Board. All revenue generated for such transfers shall be considered City generated funds. The City will notify Sunland Park at least 30 calendar days in advance of any proposed changes to the transfer fees. In the event that the City should eliminate its transfer system during the performance of this contract, an amendment to this contract by mutual agreement shall be made by both parties on how to treat transfer issues. The Director of the Mass Transit Department is authorized to sign any subsequent agreement changing the transfer policy. For purposes of this section all current transfer rates approved by the Mass Transit Board are listed in Attachment B. The City will notify Sunland Park at least 30 calendar days in advance of any proposed changes to the transfer rates. The City will update Attachment B following the approval of any changes to the transfer rates by the Mass Transit Board. No formal amendment of this Agreement is required for updating Attachment B pursuant to this Section.

ARTICLE THREE

Demand Response Paratransit Service

3.1 Service. In accordance with applicable law, including but not limited to the Americans with Disabilities Act, there shall also be established a complementary, demand response Paratransit Service. This service shall be for those passengers who, due to disabilities, are unable to utilize the regular Fixed Route Service described above and in **Attachment A**. In compliance with all applicable laws, this service shall be available only for the times during which the Sunland Park Fixed Service routes will be in service, and shall only be applicable to a $\frac{3}{4}$ mile corridor on either side of the routes noted in **Attachment A**. The City shall provide transportation for ADA eligible passengers. However, the City shall incur no cost, as this service is located outside of the City's jurisdiction. All costs of operation associated with this paratransit service shall be paid by Sunland Park.

3.2 Estimated Cost. The City shall make the Paratransit Service available to Sunland Park as an independent contractor, at an estimated cost \$65.52 per Passenger Trip, regardless of the number of passengers. This cost shall be in addition to the costs referred to above, in Section 2.2, and shall be separately billed to Sunland Park, pursuant to Section 4.4. The term "Passenger Trip" includes all operational and maintenance costs. It is expressly agreed and understood by all parties that the City shall not expend any of its own funds in the delivery of such services.

3.3 Fares. Each Paratransit Service passenger shall be charged \$2.50 per trip. All revenue generated in Sunland Park, New Mexico shall be deemed Sunland Park generated funds and shall be applied to the costs created in order to provide this Paratransit Service. The City's Mass Transit Department Board shall be authorized to change the fare in the event of business necessity, upon thirty (30) days prior written notice to Sunland Park.

3.4 Transfers. There shall be no transfers available from the Paratransit Service to additional City services. This demand response Paratransit Service shall serve a corridor with a width of three-fourths ($\frac{3}{4}$) of a mile on each side of each fixed route in Sunland Park, New Mexico, in accordance with federal regulations. The Sunland Park generated fares associated with this service shall not entitle passengers to continue trips into the City of El Paso, which began in Sunland Park, New Mexico. Passengers seeking such continuances into the City of El Paso shall be subject to an additional, City generated, passenger fee of \$2.50.

ARTICLE FOUR

Funding, Billing and Reconciliation

For Sunland Park Fixed Route Service and Paratransit Service

4.1 In accordance with the laws of the State of Texas, the City shall not pay for any transportation service outside of the El Paso City limits.

4.2 Allocation of Fares. Passengers utilizing the Sunland Park Fixed Route Service or Paratransit Service shall pay all fare payments into the City/Sun Metro Bus Fare Box. These revenues shall be segregated from all other City fares and shall be considered Sunland Park

generated revenue. In addition, any transfers purchased from the Sunland Park Fixed Route Service shall be considered Sunland Park generated revenue and shall be segregated funds. All fare and transfer payments received by the City shall be considered City generated funds and shall be separate and distinct from any Sunland Park generated funds. This specifically includes, but is not limited to, all City generated transfer funds received to transfer passengers from City to Sunland Park Fixed Route Service or Sunland Park Paratransit Service.

4.3 Funding. Funding for Sunland Park Fixed Route Service and Paratransit Service may come from any of the following sources: Congestion Mitigation Air Quality (CMAQ) funds, any other federal or state grant funding, all Sunland Park generated revenue as specified in Section 3.3 and Section 4.2, with any Remaining Cost of Operation to be paid by Sunland Park as specified in Section 4.4.

4.4 Billing Formula. The City shall bill Sunland Park monthly for each program operation utilizing the Estimated Cost established herein for the Fixed Rate Service and the Paratransit Service as described in Sections 2.2 and 3.2 of this Agreement. In calculating the amount to be paid by Sunland Park to the City, the CITY shall apply the following formula:

(Estimated Cost x Monthly Service Hours) less Sunland Park Revenue Generated Pursuant to the Applicable Program = Remaining Cost of Applicable Program Operation

Grant Funds may be applied to the Remaining Cost of Applicable Program Operation in the proportion required by the governing grant agreement and SUNLAND PARK shall be billed and shall pay for the remainder of such cost.

This formula for distributing the cost of operation of this program shall remain in effect unless amended by agreement of the parties.

4.5 Reconciliation to Determine Actual Cost of Operation. At the end of each City fiscal year during the term of this agreement, the City shall calculate the actual costs of operation of the Fixed Route Service and the Paratransit Service. If program actual costs are greater than or less than Estimated Costs, the City shall, according to the formula established in Section 4.4, bill or credit Sunland Park for the difference.

ARTICLE FIVE

Vehicles, Routes and Stops

5.1 Vehicles. The vehicles to be used in furtherance of this agreement are to be chosen from those currently in use by the City. The vehicles may have various seating configurations, however, will comfortably seat up to twenty (20) ambulatory passengers and two (2) passengers utilizing wheelchairs.

5.2 Routes. One route shall be established in furtherance of this agreement. Specifically, the route is number 83. The route is further described in **Attachment A**, as attached hereto and incorporated into this agreement. The route established in **Attachment A** may be changed by agreement of the city and the Sunland Park Planning and Management Department in accordance

with any procedures and conditions required by law or any funding agencies contributing to this project. The Director of the Mass Transit Department is authorized to sign any subsequent agreement changing the route established in **Attachment A**.

5.3 Location of Stops. Sunland Park shall be solely responsible for determining the location for each Sunland Park bus stop. The research required of Sunland Park shall include, but not be limited to, diligent investigation into any property rights issues at the proposed bus stops. In accordance with Sunland Park's responsibilities regarding such issues, the City shall not be liable for any improper placement of bus stops at Sunland Park's chosen stops.

5.4 Installation of Stops. Bus stop installations within the City of Sunland Park shall be the sole responsibility of Sunland Park, upon proper research by Sunland Park as to location of the bus stops. The cost of construction and maintenance shall be covered entirely by Sunland Park. The installation of such bus stops shall be in accordance with the City's established criteria for bus stop placement and shall take into consideration recommendations from the public.

ARTICLE SIX

Advertising; Records

Should Sunland Park choose to market or advertise any materials regarding Sun Metro and its services, including but not limited to the services detailed in this agreement, all such materials shall be submitted to the Director of the Mass Transit Department for review and approval prior to usage. Sunland Park shall not mail or use any advertising materials without the prior written approval from the Director.

ARTICLE SEVEN

Compliance with Laws

7.1 The City and Sunland Park shall comply with all applicable laws in performance of their obligations under this Agreement.

7.2 The City shall have the right to rely on any interpretation of applicable New Mexico law made by Sunland Park at the request of the City, or otherwise and Sunland Park shall have the right to rely on any interpretation of applicable Texas law made by the City, at the request of Sunland Park or otherwise.

7.3 City and Sunland Park shall observe all applicable laws, in accordance with the funding source.

7.4 In addition, all transportation services provided pursuant to the Agreement shall conform to all applicable federal and state law. In particular, with regard to funding, the City shall bear no costs associated with the provision of any transportation service pursuant to this agreement, requiring the use of any City equipment outside of the City of El Paso.

ARTICLE EIGHT

Risk Allocation - Limitation of Liability

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

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

8.3 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 NINE

Term and Termination

9.1 Effective Date. Pursuant to Texas Government Code, §763.005, the effective date of this Agreement shall be the date a fully executed copy of the Agreement is filed with the county clerk of the county in which the border municipality is located.

9.2 Term. The term of this Agreement commences on the effective date and will end one calendar year after the effective date or upon the termination of the Agreement pursuant to Section 9.3 of this Agreement. Prior to the expiration of the term of this Agreement, Sunland Park may request, by written notification to the City, that this Agreement be extended for an additional year in which case the term of this Agreement will automatically extend for an additional year. There are no limitations on the number of requests from Sunland Park to extend the term of this Agreement. If Sunland Park wishes to extend the term of the Agreement pursuant to this section, then Sunland Park will clarify in the written notification to the City whether Sunland Park desires to continue, discontinue, or modify the proposed route extension shown in red in Attachment "A".

9.3 Termination. This Agreement may be terminated as follows:

9.3.1 Upon notice by Sunland Park that it has failed to obtain grant funding for the program;

9.3.2 In the event that at any time it appears that the actual costs of the operation of these programs will exceed the Estimated Costs of: a) \$73.60 and b) \$65.52 per Revenue Hour, by more than 10%, either party may terminate this agreement upon thirty (30) days written notice to the other party; or

9.3.3 Either party may unilaterally terminate this Agreement for any or no reason upon sixty (60) days written notice to the other party.

ARTICLE TEN

General Terms and Conditions

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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 ELEVEN

Disputes and Remedies

11.1 Dispute Resolution. In the event of any controversy or claim arising out of or in any way related to this Agreement, the parties agree to submit the controversy or claim to a mutually agreed upon non-binding alternative dispute resolution procedures prior to the filing of a lawsuit with respect to the controversy or claim. The cost of the alternative dispute resolution procedure shall be divided and borne equally by the parties.

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

11.3 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.

11.4 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.

11.5 Notices. Any notice, demand, request, consent or approval that either party hereto may or is required to give the other shall be in writing and shall either be personally delivered or sent by certified mail-return receipt requested, to the following addresses:

To the City of El Paso:	The Honorable Mayor The City of El Paso, Texas 2 Civic Center Plaza, 10 th Floor El Paso, Texas 79901-1196
Copy to:	Mass Transit Department Director Sun Metro 10151 Montana Avenue El Paso, Texas 79925
To the City of Sunland Park, New Mexico:	The Honorable Mayor The City of Sunland Park, New Mexico 1000 McNutt Road, Suite "G" Sunland Park, New Mexico 88063

11.6 Authority to Execute Agreement. Each person signing below represents that he or she has read this Agreement in its entirety (including any and all Attachments); understands its terms; is duly authorized to execute this Agreement on behalf of the Party indicated below by his or her name; and agrees on behalf of such Party that such Party will be bound by those terms.

[Signatures for City of El Paso are on the following page]

CITY OF EL PASO

Dee Margo, Mayor

Executed this _____ day of _____, 2018.

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT



Jay Banasiak, Director
Mass Transit Department

[Signatures for City of Sunland Park continue on the following page]

**CITY OF SUNLAND PARK
NEW MEXICO**


Javier Perea, Mayor
Sunland Park, New Mexico

Executed this 18th day of June, 2018.

APPROVED AS TO FORM:


Brad Springer,
City Attorney Sunland Park, New Mexico

APPROVED AS TO CONTENT:


Julia Brown
City Manager

PROPOSED ROUTE EXTENSION



EXHIBIT B

FY 2018 Schedule B Mass Transit - Sun Metro Fare and Fee Schedule

Detail	FY 2019 Proposed
<u>Single trip fare for Fixed Route and BRIO RTS services</u>	
Regular Fare	\$1.50
Student Fare	\$1.00
Children btwn ages of 6-18 yrs	\$1.00
Children 5 and under with an adult	Free
Senior/Disabled Fare	\$0.30
Military Fare - Active, Retiree, Dependents	\$1.00
Lift Certified with Lift ID Card - Fixed Route	Free
Transfers	Free
<u>Multiple Ride Passes</u>	
Day Pass	\$3.50
Standard Weekly Pass	\$12.00
Student Weekly Pass	\$7.00
Military Weekly Pass	\$7.00
Senior/Disabled Weekly Pass	\$2.50
Standard Monthly	\$48.00
Student Monthly	\$30.00
Military Monthly	\$30.00
Veterans 60 - 90 Day Pass	Free
Senior/Disabled Monthly	\$10.00
<u>Sun Metro Tokens used instead of cash</u>	
Full Fare Token (10/pkg)	\$15.00
Full Fare Token (100/pkg)	\$150.00
Student Fee (10/pkg)	\$10.00
Student Fee (100/pkg)	\$100.00
<u>LIFT service Fares and Passes</u>	
Lift Passes (5)	\$12.50
Revenue collected at time of boarding bus for the demand response program	\$2.50

Multiple Ride Passes (Discounted) require appropriate ID to be displayed at boarding every time.