



COMMISSIONERS COURT COMMUNICATION

AGENDA DATE: July 9, 2012

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO
(IF APPLICABLE): KK-2012-0193

SUBJECT: Approve and authorize the County Judge to execute an Intergovernmental Agreement (KK-2012-0193) with the New Mexico Department of Transportation (NMDOT) in the amount of \$112,374 to develop and implement an advertising program for the El Paso County sponsored bus route serving El Paso, Anthony and Las Cruces.

BACKGROUND/DISCUSSION OF TOPIC: Approval of this item will authorize the County Judge to execute an Intergovernmental Agreement (KK-2012-0193) with NMDOT for a 2 year period in order to market the existing Intercity Bus Service connecting El Paso, Anthony, Texas and Las Cruces. The commuter bus service is presently 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 continue to 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 will continue to provide bus transportation in both peak directions on weekdays to El Paso, Anthony and Las Cruces using 57-passenger ADA accessible and bathroom-equipped motor coaches. The fare is \$3 each way with monthly passes available for \$90. There is no service on weekends or holidays. Ridership the last four months has averaged 4,806 passengers.

FISCAL IMPACT: Positive impact. El Paso County's match of 20% or \$28,543 will be paid by NMDOT.

PRIOR COMMISSIONERS COURT ACTION (IF ANY): Commissioners Court approved a Grant Agreement (KK-11-447) in the amount of \$112,374 with TxDOT on October 24, 2011 for marketing the Intercity Bus Service. This grant provided 80% of the total funding of \$140,917 for the Project.

RECOMMENDATION: Department recommends approval of this item.

COUNTY ATTORNEY APPROVAL

The attached 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.

COUNTY ATTORNEY: Kevin McCary

LEGAL REVIEW: Approved as to Form with Amendments/Modifications/Reservations Noted Below

LEGAL REVIEW NOTES (If Applicable): Approved as Amended subject to reservation that NMDOT represents it has authority to enter into this agreement.

DATE: May 3, 2012

SUBMITTED BY:

Rosemarv V. Neill, Director 834-8201

Contract No. _____
Vendor No. _____
Project No. _____
Control No. _____

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
EL PASO COUNTY, TEXAS

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, between the NEW MEXICO DEPARTMENT OF TRANSPORTATION (“Department”) and the COUNTY OF EL PASO, TEXAS (“County”). Collectively these entities shall be referred to as the “Parties” all of whom AGREE AS FOLLOWS:

RECITALS

WHEREAS, the Department and the County have long worked together to make available public bus transportation in El Paso County, TX, and Dona Ana County, NM, through the Department’s Park & Ride Gold Route;

WHEREAS, the Department and County have authority to enter into Intergovernmental Agreements through Section 67-3-69, NMSA 1978 and Chapter 791 of the Texas Government Code, respectively; and

WHEREAS, the Parties desire to develop and implement an advertising program (“Project”) to increase ridership with the goal of reducing highway congestion and noise and air pollution; and

WHEREAS, the Texas Department of Transportation has provided funding to the County for an advertising programs from the Federal Job Access and Reverse Commute Program (JARC) under Section 5316 of the Transportation Equity Act for the 21st Century; and

WHEREAS, the Department has state funds and internal resources available to manage the Project.

THEREFORE, the Parties agree as follows:

SECTION ONE – PURPOSE:

The purpose of this Agreement is to specify and delineate the rights and duties of the Parties related to the development and implementation of the advertising program. This Project is a joint and coordinated effort for which the Department and the County exercise their respective authority.

SECTION TWO – FUNDING:

The funding for this project will be shared by the Department and the County. The County will contribute its JARC funding, \$112,374.00, which represents 80% of the eligible federal proportioned amount for this funding category. The Department will pay the county's 20% match, which is \$28,543.00.

SECTION THREE – THE DEPARTMENT SHALL:

1. Act in the capacity of lead agency for this Project.
2. Develop a scope of work, specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal will be advertised for professional advertising services.
3. In accordance with the New Mexico Procurement Code, NMSA 1978, Section 13-1-21 et. seq., as amended, administer the bidding and selection process, negotiate a contract and hire a firm to develop and implement an advertising program.
4. Monitor, advise and be the primary contact with the firm hired to develop and implement an advertising program.
5. Provide quarterly reports to the County on the Project.
6. Provide quarterly invoices to the County, seeking 80% reimbursement of the Department's costs. The invoices shall be detailed, accompanied by supporting documentation demonstrating that costs have been paid. All expenses shall be actual rather than estimated and listed on the invoice as charged. Expenses billed to county shall not exceed \$112,374 in the aggregate.

7. Maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred on the project, and shall make all such materials available to the County, at any reasonable time during the term of this agreement.

SECTION FOUR – THE COUNTY SHALL:

1. Administer the funding for the Project and comply with all federal reporting requirements.
2. Reimburse the Department within thirty (30) days of receipt of each invoice for 80% of the Department's expenses.

SECTION FIVE – THIRD PARTY BENEFICIARY CLAUSE:

It is specifically agreed between the Parties executing this Agreement that it is not intended by any provision of any part of this Agreement to create in a member of the public a third party benefit or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death, bodily and/or personal injury to a person, damages to a property, and/or any other claims(s) whatsoever pursuant to the provision of this Agreement.

SECTION SIX – TERM:

This Agreement shall become effective upon signature of the Parties. This Agreement shall expire on May 31, 2014, or until the total amount of Federal funding of this Agreement is expended, whichever occurs first unless terminated pursuant to Section Seven.

SECTION SEVEN – TERMINATION:

Either party may terminate this Agreement upon thirty (30) days notice in writing to the other party before the Department enters into a contract with an advertising firm for development and implementation of an advertising program. By such termination neither of the Parties may nullify obligations already incurred by the other prior to the date of termination of the Agreement. After the Department has entered into an advertising contract, the County may terminate this Agreement only if it pays to the Department any termination fee or other payment owed to the advertising firm under such contract, a copy of which shall be provided to the

County promptly upon execution. The Department will take reasonable measures to avoid an advertising contract that includes a termination fee. Otherwise, this Agreement and the Project may be terminated only by mutual agreement of the Parties or as the result of material breach as described below. Notwithstanding the foregoing, either Party may terminate this Agreement for cause based upon any material breach of this Agreement by the other Party, provided that the non-breaching Party shall give the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice, the breaching Party has not corrected the breach, or in the case of a breach which cannot be corrected within thirty (30) days and the breaching Party has not begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party to be in default and terminate this Agreement effective immediately. The non-breaching Party shall retain any and all remedies available to it under law.

SECTION EIGHT – ASSIGNMENT:

No Party to the Agreement shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the other Party.

SECTION NINE – LIABILITY:

None of the Parties shall be responsible for liability incurred as a result of any other Party's acts or omissions in connection with this Agreement. Any liability incurred by the Department in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act. Any liability incurred by the County in connection with this Agreement is subject to the immunities and limitations of the Texas Tort Claims Act.

SECTION TEN – TERMS OF THIS AGREEMENT:

The terms of this Agreement are lawful and performance of all duties and obligations herein shall conform with and shall not contravene any state, local, federal or tribal statutes, regulations, rules or ordinances.

SECTION ELEVEN – SCOPE OF AGREEMENT:

This Agreement incorporates all the agreements, covenants, and understandings between the Parties. No prior agreements or understandings, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement or otherwise agreed to in writing.

SECTION TWELVE – SEVERABILITY:

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION THIRTEEN – AMENDMENT:

This AGREEMENT shall not be altered, modified, or amended except by an instrument in writing and executed by the Parties hereto.

SECTION FOURTEEN – APPROPRIATIONS:

The development and implementation of this PROJECT is subject to each Party being able to provide the funding required for each to carry out its respective responsibilities under this Agreement. If such funding is not available, then this AGREEMENT shall expire and terminate upon a showing by a Party that it lacks such funding and delivery to the other Party of a written termination notice. A notice by either Party pursuant to this Section that it lacks funding shall not be challenged by the other Party.

SECTION FIFTEEN – GOVERNING LAWS:

This Agreement shall be construed and governed as applicable by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT on the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Kathryn Bender
Deputy Cabinet Secretary

Date: _____

Approved as to Form and Legal Sufficiency by the Department's Office Of General Counsel:

By: Cynthia A Christ
Cynthia Christ
Assistant General Counsel

Date: 5-12-12

COUNTY OF EL PASO, TEXAS

Veronica Escobar, County Judge

ATTEST:

APPROVED AS TO CONTENT:

Delia Briones, County Clerk

Bob Geyer
Bob Geyer, Transportation Manager
El Paso County

APPROVED AS TO FORM:

Kevin McCary
Assistant County Attorney

GOLD ROUTE SCHEDULE
Effective April 2, 2012



Relax on Park & Ride

For More Information on NM Park and Ride schedules go to:

www.nmparkandride.com

email: nmparkandride@state.nm.us

866-551- RIDE (7433)

505-424-1110

Fax: 505-424-3626



NMDOT Park and Ride's Gold Route is a service of the New Mexico Department of Transportation, partially funded by the Texas Department of Transportation through the County of El Paso.

El Paso — Anthony, TX — NMSU — Las Cruces

Gold Route El Paso, Texas — Anthony, Texas — NMSU — Las Cruces, New Mexico							
AM Service							
Downtown El Paso	West Side El Paso	Anthony, TX	NMSU	Las Cruces Terminal	Anthony, TX	West Side El Paso	Downtown El Paso
—	4:57am	—	5:30 am	5:45am	6:17am	6:34am	6:53am
—	5:12am	5:29am	5:58am	—	—	—	—
5:30am	5:49am	6:06am	6:35am	6:52am	7:24am	7:41am	8:00am
—	—	—	7:45am	8:02am	8:34am	8:51am	9:10am
7:03am	7:22am	7:39am	8:08am	8:25am	8:57am	9:14am	9:33am
8:08am	8:27am	8:44am	9:13am	—	—	9:46am	—
PM Service							
—	M-Th 3:10pm Fri 2:00pm*	—	M-Th 3:48pm Fri 2:38pm*	—	—	—	—
—	—	—	4:15pm	4:32pm	5:04pm	5:21pm	5:40pm
—	—	—	5:25pm	5:42pm	6:14pm	6:31pm	6:50pm
4:25pm	4:44pm	5:01pm	5:30pm	5:47pm	—	—	—
—	—	—	6:04pm	6:21pm	6:53pm	7:10pm	7:29pm
5:48pm	6:07pm	6:24pm	6:53pm	7:10pm	7:42pm	7:59pm	8:18pm
6:55pm	7:14pm	7:33pm	8:02pm	8:19pm	8:51pm	9:08pm	9:27pm

***PM Service Adjustment:** Monday through Thursday the first p.m. bus will depart West Side El Paso at 3:10 p.m. and NMSU at 3:48 p.m. **Fridays**, the first p.m. bus will depart West Side El Paso at 2:00 p.m. and NMSU at 2:38 p.m.

<p>GOLD ROUTE</p> <p>ONE-WAY FARE: El Paso-Anthony-Las Cruces \$3 (exact fare required)</p> <p>MONTHLY PASS: El Paso-Anthony-Las Cruces \$90</p> <p>SYSTEMWIDE MONTHLY PASS: Includes All NMDOT Park and Ride Routes and the NM Rail Runner Express \$150</p> <p>Monthly Passes are available on-line at: www.nmparkandride.com</p> <p>For Locations of Retail Pass Sales Outlets, contact: All Aboard America! at 505-424-1110 Or visit: www.nmparkandride.com</p> <p>Park & Ride operates weekdays, except designated state holidays: New Years Day, Martin Luther King Day, Memorial Day, July 4, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the Friday following Thanksgiving, and Christmas Day.</p> <p>Exceptions: Holidays that fall on Saturday will be observed on Friday and those that fall on Sunday will be observed on Monday.</p>	<p>PICK-UP and DROP-OFF LOCATIONS</p> <p>El Paso Bert Williams Downtown Transit Center 601 Santa Fe Street, West side of Santa Fe Street, between West 3rd Avenue and Father Rahm Avenue.</p> <p>El Paso West Side Transfer Center 7535 Remcon Circle North side of Remcon Circle, off North Mesa Street</p> <p>Anthony, Texas Lowes Big 8 parking lot, on the north side of Franklin Street</p> <p>NMSU East of the Pan American Center on the Northeast corner of International Mall & Payne St.</p> <p>Downtown Las Cruces Las Cruces Terminal, 180 W. Amador</p> <p>For information on connecting services contact: El Paso Sun Metro: 915-533-3333 Las Cruces RoadRUNNER Transit: 575-541-2500 El Paso County Transit: 915-834-8242</p>
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SILVER ROUTE

	NMSU	Ashley	WSMR (See below)	Ashley	NMSU
A.M. Monday thru Friday	6:05 am	6:15 am	6:59 am	7:35 am	7:45am
P.M. Monday thru Thursday	3:48 pm	3:58pm	4:45 pm	5:15 pm	5:25 pm
P.M. Friday	2:38 pm	2:48pm	3:35 pm	4:05 pm	4:15 pm

SILVER ROUTE

FARES:

One-way fare: NMSU-Las Cruces-WSMR \$3.00, Exact Fare Required

Monthly Pass: NMSU-Las Cruces-WSMR \$90.00

System-wide Monthly Pass: Includes All NMDOT Park and Ride Routes and the NM Rail Runner Express \$150.00

Monthly Passes are Available On-line

at: www.nmparkandride.com

Passes may also be purchased at the following locations:

- Brewer Chevron, 3040 N. Main Street, Las Cruces
- University Shell, 1305 S. Solano Drive, Las Cruces
- WSMR Community Center ITR, Bldg 460

DAYS OF SERVICE: Park & Ride operates on all weekdays, except for designated state holidays: New Years Day, Martin Luther King Day, Memorial Day, July 4, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the Friday following Thanksgiving, and Christmas Day. Exceptions: Holidays that fall on Saturday will be observed on Friday and those that fall on Sunday will be observed on Monday.

PASSENGER SAFETY: For NMDOT Park and Ride's Passenger Policy go to www.nmparkandride.com.

LOT LOCATIONS:

ASHLEY LOT

Ashley Furniture Home Store Lot
3299 Del Rey Blvd. (Please park in designated spaces)

NMSU LOT

East of the Pan American Center on the Northeast corner of International Mall & Payne St.
(Please park in designated area)

WSMR SCHEDULE

Monday through Friday A.M. Departure

1ST STOP: Las Cruces Gate	6:45am
2ND STOP: Headquarters	6:48am
3RD STOP: Bldg. 1506	6:51am
4TH STOP: Bldg. 1404	6:55am
5TH STOP: Bldg. 882	6:59am

Monday through Thursday P.M. Departure

1ST STOP: Bldg 882	4:32pm
2ND STOP: Bldg. 1404	4:36pm
3RD STOP: Bldg. 1506	4:39pm
4TH STOP: Headquarters	4:42pm
5TH STOP: Las Cruces Gate	4:45pm

Friday P.M. Departure

1ST STOP: Bldg 882	3:22pm
2ND STOP: Bldg. 1404	3:26pm
3RD STOP: Bldg. 1506	3:29pm
4TH STOP: Headquarters	3:32pm
5TH STOP: Las Cruces Gate	3:35pm

NMDOT Park and Ride does not discriminate on the basis of disability, race, color, national origin, gender or age in the delivery of service. To obtain more information on our nondiscrimination obligations or to file a Title VI complaint, contact us at: NMDOT – Transit and Rail Division Director, PO Box 1149, Santa Fe, NM 87504-1149 RE: Title VI Complaint

SILVER ROUTE SCHEDULE Effective April 2, 2012



Relax on Park & Ride

For More Information:

www.nmparkandride.com

email: nmparkandride@state.nm.us

866-551- RIDE (7433)

505-424-1110

Fax: 505-424-3626

NMDOT Park and Ride's Silver Route is a service of the New Mexico Department of Transportation

From: Bob Geyer
Sent: Thursday, June 28, 2012 1:49 PM
To: Rosemary Neill
Cc: Bob Geyer
Subject: KK-2012-0193 Legal Review Form

From: Kevin McCary
Sent: Thursday, May 03, 2012 10:42 AM
To: Bob Geyer
Cc: Alicia Vera; Josefina Vasquez
Subject: KK-2012-0193 Approval

Approved subject to amendments and modifications listed below. Please place on CC agenda at your convenience. Please include the Amended Contract (attached) in the backup as well as this approval notice. Thanks.

COUNTY LEGAL REVIEW FORM

KK-2012-0193

Contract Description: County & NMDOT/Advertising: EP; Anthony; Las Cruces Bus Service.

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.

_____ Approved as to Form as Submitted
 _____ Approved as to Form with Amendments/Modifications/Reservations
Noted Below*
_____ Not Approved

Approved as amended subject to reservation that N.M. Department represents it has authority to enter this Agreement.

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.

Kevin McCary
Assistant County Attorney

Kevin McCary
Assistant County Attorney
General Counsel Unit
Jo Anne Bernal, County Attorney
500 E. San Antonio, Suite 503
El Paso, TX 79901
V: 915-546-2081
F: 915-546-2133