

**STATE OF TEXAS**  
**COUNTY OF BEXAR**

**§ INTERLOCAL FUNDING AND**  
**§ SERVICE AGREEMENT WITH VIA**  
**§ METROPOLITAN TRANSIT FOR**  
**SERVICE IMPROVEMENTS**

**THIS INTERLOCAL FUNDING AND SERVICE AGREEMENT** (hereafter referred to as “the Agreement” or “this Agreement”) for funding public transportation frequency and capacity improvements is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (hereafter referred to as “Effective Date”), by and between the **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality (hereafter referred to as “City”) and **VIA METROPOLITAN TRANSIT**, a Metropolitan Transit Authority under Chapter 451 of the Texas Transportation Code (hereafter referred to as “VIA”), acting by and through its officers, hereto duly authorized. City and VIA singularly or collectively shall be referred to herein as “Party” or “the Parties.” This Agreement is entered into by City and VIA pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791. This Agreement is intended to further the purpose of the Interlocal Cooperation Act by increasing the efficiency and effectiveness of local governments.

**WITNESSETH**

WHEREAS, lack of adequate funding levels have resulted in VIA providing bus service that is not meeting demand with regard to access, capacity, and frequency, and in July 2015, City Councilman Rey Saldana requested that the policy issue of how the City utilizes its Advanced Transportation District (“ATD”) funding be discussed and proposed that the ATD funding be re-allocated to VIA to improve bus service, and

WHEREAS, in January 2016, the City ATD Ad Hoc Committee was established and charged to evaluate VIA’s funding model and determine if the City should allocate all or a portion of the City’s ATD funds to enhance VIA services, and the Committee held six meetings between February and June 2016 that included an overview of the preferred level of service and potential funding options; and

WHEREAS, the City ATD Ad Hoc Committee recommended that the City transfer \$10 million annually in ATD funds to VIA over a four year period and beyond, the City ATD Fund maintain at least \$5 million annually toward sidewalk funding, the City annual budget strive to maintain funding levels consistent with the fiscal year 2016 levels at \$15 million for sidewalks, and the proposed 2017 Bond Program have a substantial sidewalk program; and

WHEREAS, the Transportation, Technology and Utilities (“TTU”) City Council Committee was briefed on the ATD Ad Hoc Committee’s recommendation and the impact to the City’s ATD Program, and the TTU City Council Committee’s recommendation was to have staff explore funding options beyond the City’s ATD in order to provide \$10 million in funding annually to VIA, phased-in over a four year period; and

WHEREAS, VIA’s total revenue for fiscal year 2016 is estimated at \$230.67 million, and VIA is primarily funded through a one-half cent sales tax (0.500%) approved by voters in 1977 via the Metropolitan Transit Authority (“MTA”) tax and through a one-half of one-quarter cent sales tax (0.250%) approved by voters in 2004 through the ATD, and for fiscal year 2016 the MTA will generate \$143.0 million and the ATD will generate \$32 million in revenue for VIA and the remaining \$56 million is collected through fairs and grants; and

WHEREAS, the sales tax revenue VIA receives is less than other major cities, and VIA needs an additional one-half (½) cent to be comparable to other transit authorities, and the current sales tax rate for the City of San Antonio is the maximum allowed by State law (8.25%), and an increase above the current rate would require legislative action; and

WHEREAS, the 0.125% for Pre-K 4 SA sales tax can be considered for renewal on March 31, 2021 and the 0.125% for Edwards Aquifer/Park Protection sales tax can be re-evaluated once \$100 million is generated for Edwards Aquifer and \$80 million is generated for Parks Protection; and

WHEREAS, with an additional \$10 million in revenue, the City and VIA will be able to initiate actions in accordance with the SA Tomorrow and VIA Vision 2040 plans by funding annual operating costs as a result of implementing frequency improvements on ten routes and travel time and capacity improvements on seven major corridors, and VIA will provide the capital funds to purchase an additional 29 buses in FY 2017-2018.

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

**ARTICLE I**  
**RECITALS**

Each of the above Recitals stated herein above are incorporated into and made a part of this Agreement.

**ARTICLE II**  
**PURPOSE**

The purpose of this Agreement is to establish the terms and conditions under which the City will provide funds to VIA (other than the City's ATD funds) to pay for costs related to implementation of public transportation capacity, frequency, and travel time improvements.

**ARTICLE III**  
**TERM**

This Agreement shall commence upon the execution date of the last signatory party to the Agreement and is subject to annual appropriation of City funds and review by the Parties.

**ARTICLE IV**  
**FINANCIAL COMMITMENT**

The City shall provide the not-to-exceed sum of \$10 million annually in funds to VIA, other than the City's ATD funds, over a four year period as follows: no (\$0) funding for fiscal year 2017, \$2.2 million for fiscal year 2018, \$6.5 million for fiscal year 2019, and \$10 million for fiscal year 2020 and beyond. The availability of City funds are subject to appropriation by City Council and no other funds shall be available from the City pursuant to this Agreement. Payments of annual appropriated City funds to VIA will be made quarterly during the months of October, January, April, and July. The Parties acknowledge City's Contribution defined in this Agreement.

**ARTICLE V**  
**OBLIGATIONS OF CITY**

- 5.01 Pursuant to this Agreement, City shall provide funds to VIA as described in Article IV above.
- 5.02 The City identifies its Director of Transportation & Capital Improvements (“TCI”) or his/her designee as its contact person for this Agreement. The City identifies the Director of TCI or his/her designee as the City’s Project Manager for the work described in this Agreement.

**ARTICLE VI**  
**OBLIGATIONS OF VIA**

- 6.01 Pursuant to this Agreement, VIA shall perform and/or provide the following:
  - a. Implement frequency improvements on ten routes and travel time and capacity improvements on seven major corridors as described by the following:

**Frequency Improvements on 10 Routes**

1. #26 Martin Luther King	From 30 minutes to 20 minutes of base service times
2. #502 Thousand Oaks	From 60 minutes to 30 minutes of base service times
3. #602 North Star/Med Center	From 60 minutes to 30 minutes of base service times
4. #607 Med Center/Ingram	From 60 minutes to 30 minutes of peak service times
5. #611 Valley Hi/Kel-Lac	From 60 minutes to 30 minutes of peak service times
6. #613 Heritage NW/Kel-Lac	From 60 minutes to 30 minutes of base service times
7. #615 Kel-Lac/Heritage Park	From 60 minutes to 30 minutes of base service times
8. #616 Sky Harbour/Kel-Lac	From 60 minutes to 30 minutes of base service times
9. #617 Kel-Lac/Rainbow Hills	From 60 minutes to 30 minutes of base service times
10. #618 Ingram/Westlakes	From 60 minutes to 30 minutes of peak service times

**Travel Times and Capacity Improvements on Seven Major Corridors** - 12 minute service from 6:00 am to 6:00 pm, fewer stops, and use of transit signal priority where available. These are high-use/high ridership corridors that are not already programmed for Primo-type services.

- 1. San Pedro
- 2. W. Commerce
- 3. Broadway
- 4. Pleasanton
- 5. E. Houston Street
- 6. New Braunfels Avenue
- 7. Culebra Road

- b. Use the funds provided by the City, as described in this Agreement, to fund the annual operating costs that result from implementing the frequency improvements and travel time and capacity improvements described above.
- 6.02 Upon provision of written notice to the City, VIA may make adjustments to those service improvements funded by the City contribution that vary from those described in provision 6.01(a)

above by no more than 20% total for either Frequency Improvements (service adjustment of no more than two of the ten described routes) or Travel Times and Capacity Improvements (no more than one of the five described major corridors). Service adjustments exceeding those described above and failure to provide written notice of the same to the City will constitute breach of this Agreement.

- 6.03 If VIA determines that service improvements funded by the City contribution require adjustment(s) that vary from those described in provision 6.01(a) above by more than 20% total for either Frequency Improvements or Travel Times and Capacity Improvements, the designated representative(s) of the City and VIA agree to meet and confer to discuss such adjustments prior to implementation. If the representative(s) from each party agree to such service adjustments, in writing, the adjustments become part of this Agreement and do not constitute breach of this Agreement.
- 6.04 Provide and use VIA funds to purchase an additional 29 buses in fiscal year 2017-2018.
- 6.05 VIA hereby identifies its President/CEO or his/her designee as its Project Manager for the work described herein.

## **ARTICLE VII** **PROJECT MANAGEMENT**

- 7.01 City and VIA staff shall hold periodic conferences throughout the development and implementation of this public transportation capacity, frequency and travel time improvement project ("Project"). For future meetings with VIA staff, VIA shall provide City with written (e.g.: letter or e-mail) notice at least seventy-two (72) hours in advance, of the location, date, and time of all meetings in order that City representatives may participate.
- 7.02 VIA will manage, oversee, administer and carry out all of the activities and services required for design and implementation of the Project to ensure that the Project is developed, implemented, managed and funded in accordance with the terms of this Agreement.
- 7.03 VIA shall promptly furnish City's Designated Representative with copies of all legal notices received by VIA affecting the Project, including, without limitation, notices from governmental authorities, notices from any party claiming default in any payment obligation, and any other notice not of a routine nature. VIA shall promptly notify City's Designated Representative in writing of any suit, proceeding, or action that is initiated or threatened in connection with the Project or against VIA and/or City.
- 7.04 VIA's Project Manager shall issue written notice to City's Project Manager when fifty percent (50%) and one hundred percent (100%) of the annual funding provided to VIA has been expended.
- 7.05 In accordance with provision 6.02 above, VIA shall issue written notice to City's Project Manager before VIA makes adjustments to those service improvements funded by the City contribution as described in provision 6.01(a) above.
- 7.06 VIA shall maintain the books, records, and documents pertaining to the Project. The City's Project Manager shall have access to, and the right to examine, same upon reasonable notice to VIA's Project Manager.

**ARTICLE VIII**  
**DEFAULT**

In the event of a material breach of this Agreement, the non-breaching Party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The Party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching Party by the end of the thirty (30) day period, the non-breaching Party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount paid by the non-breaching party for the Project.

**ARTICLE XIV**  
**PRIOR AGREEMENTS SUPERSEDED**

This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

**ARTICLE X**  
**ENTIRE AGREEMENT**

This Agreement, including exhibit(s), constitutes the entire Agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements and understandings, whether written or oral, relating to such subject matter. If there is a conflict between or among the provisions of this agreement and any of the following items, the order of precedence shall be as follows: (a) the Agreement, and (b) the exhibits to the Agreement.

**ARTICLE XI**  
**ASSIGNMENT OR TRANSFER OF INTEREST**

Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

**ARTICLE XII**  
**LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**ARTICLE XIII**  
**COMPLIANCE WITH LAWS AND ORDINANCES**

Both Parties shall comply with all federal, state and local laws and ordinances, in connection with the work and services performed under this Agreement.

**ARTICLE XIV**  
**TEXAS LAW TO APPLY**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in San Antonio, Bexar County, Texas.

**ARTICLE XV**  
**AMENDMENT**

No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and be duly executed by the Parties hereto.

**ARTICLE XVI**  
**NOTICES**

All notices required to be given under this Agreement shall be in writing and either shall be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith, unless a provision of this Agreement designates another party and provides a different address. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to City:                   Mr. Mike Frisbie, PE  
  Director/City Engineer  
  Transportation & Capital Improvements Department  
  114 West Commerce  
  P.O. Box 839966  
  San Antonio, Texas 78283-3966

With a copy to:           City Clerk  
  City of San Antonio  
  P.O. Box 839966  
  San Antonio, Texas 78283-3966

If to VIA:                   Mr. Jeffrey C. Arndt  
  President/CEO  
  VIA Metropolitan Transit  
  The Grand  
  123 N. Medina St.  
  San Antonio, TX 78207

**ARTICLE XVII**  
**FORCE MAJEURE**

Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

**ARTICLE XVIII**  
**MULTIPLE COUNTERPARTS**

This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

*(Signature Page immediately to follow)*

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original, on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF SAN ANTONIO**

**VIA METROPOLITAN TRANSIT**

By: \_\_\_\_\_  
SHERYL SCULLEY

By: \_\_\_\_\_  
JEFFREY ARNDT

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney's Office

DRAFT