

STATE OF TEXAS	§	
	§	AGREEMENT FOR TRANSIT
	§	SERVICES -- EMERGENCY
COUNTY OF BEXAR	§	

The City of San Antonio (“COSA”), a home-rule municipality in Bexar County, Texas, and VIA Metropolitan Transit (“VIA”), a metropolitan transit authority established pursuant to Chapter 451 of the Texas Transportation Code, enter this agreement acting through an ordinance adopted by the City of San Antonio’s City Council and through a resolution passed and approval by VIA’s Board of Trustees, both parties acting under the authority of the Interlocal Cooperation Act, Chapter 791, Texas Government Code Vernon’s (2012).

WHEREAS, COSA is a Texas municipality and VIA is a metropolitan transit system operating within Bexar County, Texas; and

WHEREAS, Chapter 791 of the Texas Government Code provides that governmental entities of the State may contract with each other to provide governmental functions and services and provide fire protection and associated services to protect public health; and

WHEREAS, it is to the mutual benefit of the COSA and VIA that emergency services considered critical under state and federal law such as transportation to emergency centers continue to be supplied throughout the City of San Antonio during declared emergencies, and that its residents continue to be protected from damage and danger; and

WHEREAS, the COSA has a duty to protect its citizens by providing shelter and medical services during emergency situations and therefore must guarantee adequate transportation to make sure residents and displaced persons can obtain access to such services;

NOW THEREFORE, in consideration of the terms contained in this Agreement, COSA and VIA, through their respective governing bodies, agree as follows:

SECTION 1. SERVICES

1.01 Services To Be Provided. COSA's Office of Emergency Management ("SAOEM") provides coordination and support in response to local or statewide manmade or natural disasters such as fires, building collapse, tornados or hurricane shelter support. Subject to the terms and conditions hereinafter set out, VIA agrees to provide, as quickly and efficiently as possible, on behalf of COSA's SAOEM emergency transportation and shuttle services during declared emergencies in the San Antonio area, subject to the following understandings and prerequisites:

- a. The transportation that may be provided under this Agreement may only be offered by VIA under circumstances set out by the Federal Transportation Administration (hereinafter "FTA") under 49 CFR 604 Charter Service (hereinafter the "Federal Charter Regulations").
- b. The Federal Charter Regulations prohibit charter service by VIA except under specific exceptions. One such exception is for emergency services. At the time of entering into this agreement, the exemption **ONLY** arises *"...for actions directly responding to an emergency declared by the President, governor, or mayor..."* See, 49 CFR 604.2 (f).
- c. Emergency services under the Federal Charter Regulations are limited to no more than **forty-five (45) days** for an event. For purposes of this Agreement, "Event" shall mean and encompass the incident that resulted in the initial emergency declaration as well as the resulting displacement of individuals into the City of San Antonio caused by the incident.
- d. Notwithstanding any other provision contained in this Agreement, if the parameters in the Federal Charter Regulations change, it is agreed and understood that any such change will automatically be incorporated into this Agreement.

- e. It is agreed and understood that the Texas Disaster Act of 1975, as amended, [Texas Gov't Code, §418.001 *et. seq.*] can and may preempt this Agreement.

1.02 Duties. SAOEM, as part of its responsibility, must arrange emergency transportation from various locations to shelter sites or from shelter sites to various support centers such as pharmacies, shopping centers, and medical support or physician locations. Due to the nature of emergency operations, exact locations to transport from or to cannot be determined until an event that requires transportation occurs. Although activation of a transportation contract may be in response to a statewide emergency event, any support under this contract will be limited to transportation within the limits of Bexar County, Texas.

1.03 Declaration of Emergency. Upon an emergency being declared, VIA and COSA agree to meet as soon as possible to mutually determine the extent of service that will be provided for the declared emergency Event. Any changes to the service must be mutually agreed upon. Service will continue, as agreed, until VIA is released by a representative of the SAOEM or until 7p.m. on the forty-fifth (45th) day of the Event, whichever occurs first. If COSA, in its sole discretion, determines the need for service will exceed forty-five (45) days during an Event, the Parties agree and understand that COSA shall be and is solely responsible for locating and securing further transportation services.

1.04 Services. Subject to a formal emergency declaration by the President, Governor or the Mayor, VIA agrees to provide services during major emergencies or disasters when the COSA activates its Emergency Operations Center or otherwise provides verbal notice. VIA acknowledges that the COSA is procuring these services for the benefit of the public. VIA agrees, in support of public good purpose, to consider the COSA as the customer and shall provide the COSA-requested transportation services in as timely a manner as practicable.

1.05 Provision of Services. COSA and VIA agree that these services will only commence if a proper declaration of disaster is in place. VIA agrees to provide COSA

such services as quickly and efficiently as possible. COSA agrees and understands that VIA must maintain its regular transit services as well as provide the emergency services provided for herein. In the event VIA is unable to meet the service requirements, VIA agrees to notify COSA immediately and to provide the requested services as soon as practicable.

1.06 Term of Agreement. VIA shall provide these Services beginning on January 1, 2017 and ending on December 31, 2017. This Agreement will automatically renew each year on January 1st, with its termination date being December 31, 2021, unless one of the parties terminates this contract earlier than that date under the terms or pursuant to the provisions of this Agreement, and so long as COSA appropriates funds from current revenues to continue the Agreement.

1.07 Service Requirements.

- a. VIA designates its Manager of Bus Service Transportation to serve as a single point of contact for this Agreement.
- b. COSA designates COSA's Emergency Management Coordinator to serve as a single point of contact for this Agreement.
- c. VIA will mobilize service as quickly as possible to any request received from COSA upon a proper declaration of an emergency and contact from COSA's designated representative to so mobilize.
- d. VIA will provide buses or other appropriate vehicles from its fleet, as VIA determines necessary and as requested for transportation services for able-bodied and disabled individuals as appropriate upon notification and after consultation with SAOEM.
- e. Subject to the forty-five (45) day limitation imposed by the Federal Charter Regulations, VIA buses and other vehicles will be available during an emergency to provide shuttle service to and from shelter sites and support centers and other

transportation services as reasonably anticipated and mutually determined between VIA and SAOEM.

1. While emergency service is being provided under this Agreement, VIA will provide an on-site supervisor to be present during operational phases of the effort.

2. VIA shall provide qualified drivers employed by VIA to operate any vehicles it provides for use under this Agreement.

1.08 VIA Quality Control.

a. VIA shall provide assurance that all employees assigned to the emergency transportation response have:

- Been subject to pre-employment criminal background check; and
- Have all necessary driver qualifications to operate assigned equipment as VIA requires of drivers for its regular operations.

b. VIA must ensure that all vehicles assigned under this Agreement have:

- all proper safety inspections and that all accessory equipment has been inspected.
- mechanical maintenance support during the entire Event or have replacement vehicles available as necessary.

1.09 Right to Inspect. VIA has responsibility to manage or assign the proper vehicles and equipment required for transportation based on need, capable of performing the required functions. COSA or its representative maintains the right to object to the use of any equipment or driver as it deems to be in the best interest of COSA. Should COSA object, VIA will use its best efforts to accommodate COSA's objection and to minimize any resulting delay or insufficiency of service.

SECTION 2. COSTS

2.01 Charges. COSA agrees to pay and VIA agrees to accept for each vehicle VIA's currently approved charter tariff or rate of ONE HUNDRED TWENTY FIVE AND NO/100THs DOLLARS (\$125.00) per hour, inclusive of all supervisory charges as well as fuel, labor, overhead, depreciation and indirect costs. The hourly rate shall begin when the vehicle leaves VIA's bus maintenance facility and continues until the vehicle returns to the bus maintenance facility each day during the Event. It is further agreed and understood by the Parties that if the Local Governmental Approval Committee (LGAC), established under the Texas Transportation Code, Section 451.061, approves changes to VIA's charter rate during the term of this Agreement, then the newly approved rate shall automatically be applied to this Agreement from the date the revised rate was approved.

2.02 Billing. Within thirty (30) days from the date VIA's participation in the Event concludes, VIA will provide COSA an invoice providing the total amount due. In addition to the invoice, VIA will provide a report showing, by day, each vehicle provided under this Agreement, the number of hours the vehicle was out and the log showing any and all trips made. COSA agrees to and shall pay the invoice promptly but not more than thirty days from receipt. All payments made under this Agreement shall be by business check or by money order and shall be made payable to "VIA Metropolitan Transit". Payment shall be sent to the following address: VIA Metropolitan Transit, Finance Department, 800 W. Myrtle, San Antonio, Texas 78212.

2.03 Source of Funds. Any party paying for performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

SECTION 3. TERMINATION

3.01 Annual Termination Review. Representatives of VIA and COSA shall meet on or before October 1st of each year this Agreement is in effect to review and determine the status of this Agreement. Based on the review, either Party may elect not to renew this Agreement by providing written notice of termination to the other party on or before November 1st of the then current term.

3.02 Termination. Any other provision notwithstanding, either Party, at any time, may elect to terminate this Agreement by providing ninety (90) days written notice to the other party.

SECTION 4. GENERAL PROVISIONS

4.01 Liability and Venue. The Parties hereby acknowledge and understand that they are both governmental entities and that the Texas Tort Claims Act and other applicable laws will govern issues of liability. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas. The Parties shall maintain self-insurance at a level sufficient to meet their respective obligations under this Agreement.

4.02 Assignment. This Agreement is not transferable or assignable without the prior written consent of the other Party. Failure to obtain written consent before assigning any rights under this Agreement shall result in automatic termination of the Agreement, and neither Party shall have any further duty to perform or other liability. Consent shall not be unreasonably withheld.

4.03 Comparative Liability. In the event the parties are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with

the laws of the State of Texas and the United States, without, however, waiving any governmental immunity available to the parties under Texas and Federal law and without waiving any defenses of the parties under Texas and Federal law.

4.04 Tort Claims Act. Each party acknowledges that the other party is a political subdivision of the State of Texas and is subject to, and complies with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

4.05 Notice of Claims. Each party shall promptly advise the other party in writing of any claim or demand against it or known to it related to or arising out of actions or omissions under this Interlocal Cooperation Contract and shall see to the investigation of and defense of such claim or demand at its expense. The other party shall have the right, at its option and at its own expense, to participate in such defense without relieving the advising party of any of its obligations under this paragraph.

4.06 Severability. If any provision of this Agreement is held invalid or unenforceable under federal, state or local laws, then, and in that event, it is the intention of the Parties that any unenforceability shall not affect any other provision of this Agreement and that the remainder of this Agreement shall be construed as if such invalid or unenforceable provision was never included.

4.07 Notice by Mail. Any notice or claim mailed shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) days advance notice of such change of address in accordance with the provisions hereof. Except as otherwise provided herein, all notices shall be sent to the following:

If to COSA:

City of San Antonio
Attn: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

With a copy to:

Charles N. Hood, Fire Chief
San Antonio Fire Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If to VIA:

Vice President of Operations
VIA Metropolitan Transit
1021 San Pedro
San Antonio, Texas 78212

With a Copy to:

Manager of Bus Service Transportation
VIA Metropolitan Transit
1021 San Pedro
San Antonio, Texas 78212

4.08 Force Majeure. Neither Party to this Agreement shall be required to perform a duty set out in this Agreement so long as that performance is delayed or prevented by acts of God, strikes, material or labor restrictions by any governmental authority, civil riot, floods, or any other cause not reasonably within the control of either Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.

4.09 Entire Agreement. This Agreement constitutes the final and entire agreement between the Parties. It contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties unless made in writing.

4.10 Amendments. This Agreement may be amended only by the mutual written agreement of the Parties, and any such amendment is subject to subsequent approval by each party's governing body.

4.11 Parties Bound. This Agreement shall bind and benefit the Parties to the Agreement and their respective successors and assigns, except as otherwise expressly provided for in this Agreement.

EXECUTED to be effective this _____ day of _____, 2016. [Effective Date]

CITY OF SAN ANTONIO

VIA METROPOLITAN TRANSIT

By: _____

Sheryl Sculley
City Manager

By: _____

Jeffrey C. Arndt
President/CEO

APPROVED AS TO FORM:

By: _____

City Attorney