

AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY  
AND  
TOWN OF ORO VALLEY  
FOR PROVISION OF CIRCULATOR BUS SERVICE  
AND  
MAINTENANCE OF EFFORT FUNDING

This Agreement (hereinafter "the Agreement") is entered into by and between the Regional Transportation Authority of Pima County ("the RTA"), a special taxing district formed pursuant to Title 48 Chapter 30 of the Arizona Revised Statutes (A.R.S.), and Town of Oro Valley ("the Town"), a municipal corporation of the State of Arizona, pursuant to A.R.S. § 11-952.

**RECITALS**

- A. A.R.S. § 48-5301, *et seq.*, authorizes the RTA to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Regional Transportation Plan ("the Plan"), approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.
- B. The governing board of the RTA is composed of representatives of each member of the regional council of governments in accordance with A.R.S. § 48-5303.
- C. Pursuant to A.R.S. § 48-5304 (12), the governing board of the RTA has the authority to implement the elements of the Plan.
- D. Pursuant to A.R.S. § 48-5304 (13), the governing board of the RTA shall coordinate the implementation of the Plan among the local jurisdictions.
- E. A Regional Transportation Fund was established by the Arizona Legislature pursuant to A.R.S. § 48-5307 to be the repository for those funds collected for the purpose of funding the transportation projects identified in the Plan.
- F. The RTA is authorized by A.R.S. § 48-5308 to distribute the regional transportation funds to the members of the RTA and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Plan.
- G. The provision of neighborhood circulator bus systems ("the Project") is one of the transportation project Elements included in the Plan.
- H. The Town and the RTA wish to cooperate in the provision of regional transit services within the Town of Oro Valley.
- I. The Town intends to contribute an annual Maintenance of Effort (MOE) funding to the Project, pursuant to A.R.S. § 48-5308 (F), under the terms and conditions contained in this Agreement, and has entered into this Agreement with the RTA for that purpose.

**NOW, THEREFORE**, the Town and the RTA, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

## **AGREEMENT**

- 1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties with regard to the provision of neighborhood bus services, such as neighborhood circulator bus routes and/or dial-a-rides within the Oro Valley area.
- 2. Project.** The Project consists of the annual provision of both deviated neighborhood circulator and dial-a-ride services by the RTA within the service area of the Town of Oro Valley.
- 3. Effective Date; Term.** This Agreement shall become effective on July 1, 2011, and shall continue in effect until June 30, 2016, unless earlier terminated or extended by written agreement of the parties.
- 4. Annual MOE Funding; Calculation and Process.** The future amount owed for each fiscal year following fiscal 2011-12 will be adjusted by the annual percentage change from the previous calendar year in the GDP price deflator, as defined in A.R.S. § 41-563, and contained in a revised annual Exhibit A and made part of this Agreement by formal amendment. Such Exhibit A annual amendment may be executed in writing by the Executive Director of the RTA and the Town Manager.
- 5. Responsibilities of Town.**
  - a. The Town will provide assistance and staff in the development, promotion and outreach for circulator bus services and other transit related items.
  - b. The Town will assist the RTA in the consolidation of transit service operations with the RTA as the managing entity, which may include, for example, permit and facility usage fee waivers, etc.
  - c. The Town will assist in the RTA's efforts to secure federal, state, and other sources of funding for the provision of enhanced circulator bus service in the Town.
  - d. The Town will allow the RTA to utilize town re-branded buses for the provision of transit services.
  - e. The Town's MOE is being offset by the value of the transit vehicles for the term of this Agreement. Such value shall not exceed the value of an independent cost estimate and shall be spread over the five year period to minimize impact to the RTA.
  - f. The Town will pay future MOE amounts after the term of this Agreement upon the terms of a future agreement to be executed between the Town and the RTA.
  - g. All Town funding is subject to budget appropriations.
  - h. The Town will accept the RTA's contract with the RTA's chosen vendor for provision of the neighborhood circulator bus service.
- 6. Responsibilities of RTA.**
  - a. As the Region's Lead Agency for the provision of neighborhood circulator bus service, the RTA shall be responsible for providing deviated fixed route, and dial-a-ride services within the Town of Oro Valley.
  - b. The RTA will consult with the Town and the RTA Transit Working Group in the planning for the delivery of this service, including route design, demand planning, scheduling and circulator bus stop locations.

- c. The RTA will allow a Town representative on the selection committee for the neighborhood circulator bus services contract.

**7. Changes in Service.** From time to time, modifications to the circulator bus service may occur.

- a. The RTA, with participation from the Town and the RTA Transit Working Group, shall develop performance standards for circulator bus service within the region.
- b. The RTA will include the Town in the planning and design of service changes in the Town.
- c. The RTA and Town agree to hold at least one public meeting in the Town or, if deemed by staff to be more effective, provide an alternative public comment method thirty days prior to any substantive changes in circulator bus service.

**8. Fares.** Fares for the neighborhood circulator bus service will be consistent with the fares charged by the regional bus fixed route system (i.e., Sun Tran).

- a. The RTA and Town agree to hold at least one public meeting in the Town or, if deemed by staff to be more effective, provide an alternative public comment method prior to the finalization of any future circulator bus fare changes.

**9. Termination.** Either party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

- a. Termination at Will. This Agreement may be terminated at any time, without cause, by providing written notice of such termination to the other party at least ninety (90) days prior to the termination date.
- b. Cancellation for Conflict of Interest. This Agreement is subject to the provisions of AR.S. § 38-511, which are incorporated herein by this reference.

**10. Indemnification.**

- a. Mutual Indemnity. To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other party, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.
- b. Notice. Each party shall notify the other in writing within thirty (30) days of the receipt of any claim, demand, suit or judgment against the receiving party for which

- c. Negligence of indemnified party. The obligations under this Section 10 shall not extend to the negligence of the indemnified party, its consultants, contractors or employees.
- 11. Insurance.** When requested by the other party, each party shall provide proof to the other of their workers' compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.
- 12. Books and Records.** Each party shall keep and maintain proper and complete books, records and accounts, which shall be open for inspection and audit by duly authorized representatives of the other party at all reasonable times.
- 13. Non-assignment.** Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.
- 14. Construction of Agreement.**
- a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.
  - b. Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.
  - c. Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.
  - d. Captions and Headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
  - e. Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.
- 15. Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Town or the RTA.
- 16. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the Town and RTA employees, or between RTA and Town employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's

**17. No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

**18. Compliance with Laws.** The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

- a. Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 2009-09 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.
- b. Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- c. Workers' Compensation. An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

- d. Compliance with Immigration Laws. As mandated by Arizona Revised Statutes ["A.R.S."] section 41-4401, the parties are prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. section 23-214(A). The parties must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. section 23-214(A). Therefore, in signing or performing any contract (including this Agreement) the parties fully understand that:
  - i. They warrant that they and any subcontractors they may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. section 23-214(A);
  - ii. A breach of the warranty described in subsection A, shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement; and

iii. The parties or their designees retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Agreement to ensure that the contractor or subcontractor is complying with the warranty under subsection i.

e. Scrutinized Business Operations. No Scrutinized Business Operations. Pursuant to A.R.S. sections 35-391.06 and 35-393.06, the Contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. sections 35-391 and 35-393, in either Sudan or Iran.

**19. Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**20. Force Majeure.** A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

**21. Notification.** All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

The Authority:  
Gary G. Hayes, Executive Director  
Regional Transportation Authority  
177 N. Church, Suite 405  
Tucson, AZ 85701

Town of Oro Valley:  
Craig Civalier, P.E.  
Town Engineer  
11000 N. La Cañada  
Oro Valley, AZ 85737

Tobin Rosin  
Town Attorney  
11000 N. La Cañada  
Oro Valley, AZ 85737

**22. Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy

**23. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

In Witness Whereof, the Town of Oro Valley has caused this Agreement to be executed by the Mayor and Council, upon resolution of the Mayor and Council attested to by the Town Clerk, and the RTA has caused this Agreement to be executed by its Board Chair.

**REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY:**

\_\_\_\_\_  
Jennifer Eckstrom, Board Chair

\_\_\_\_\_  
Date

**TOWN OF ORO VALLEY:**

\_\_\_\_\_  
Dr. Satish I. Hiremath, Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Julie K. Bower, Town Clerk

\_\_\_\_\_  
Date

The foregoing Agreement between the Town of Oro Valley and the RTA has been approved as to content and is hereby recommended by the undersigned.

\_\_\_\_\_  
Craig Civalier, P.E. Town Engineer  
Development and Infrastructure Services  
Town of Oro Valley

\_\_\_\_\_  
Date

**ATTORNEY CERTIFICATION**

The foregoing Agreement by and between the Regional Transportation Authority of Pima County and the Town of Oro Valley has been reviewed pursuant to A.R.S. Section 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

**Regional Transportation Authority of Pima County:**

\_\_\_\_\_  
Thomas Benavidez, Attorney for the RTA

\_\_\_\_\_  
Date

**Town of Oro Valley:**

\_\_\_\_\_  
Tobin Rosen, Town Attorney

\_\_\_\_\_  
Date

**EXHIBIT A**  
**to the**  
**Intergovernmental Agreement**  
**between**  
**The Regional Transportation Authority of Pima County and Town of Oro Valley**  
**for the**  
**Regionalization of Neighborhood Circulator Transportation Services**  
**and**  
**Maintenance of Effort Funding**

<b><u>Maintenance of Effort (MOE) Baseline per A.R.S. § 48-5308 (F)</u></b>	Oro Valley
Total Oro Valley Transit Operating Expenditures FY 2003-04 <i>(Coyote Run Special Needs Services)</i>	\$ 337,960
Less Revenue Adjustments <i>(Fares, Fare Credits, Federal Aid, State Grants)</i>	\$ 278,659
Net Oro Valley Net Cost for Transit Services	\$ 59,301
Oro Valley MOE Baseline Oro Valley Transit Services	\$ 59,301
 <b><u>GOP Adjustment to FY 2011-12 per A.R.S. § 41-563</u></b>	
Growth Factor 15.793 %	\$ 9,365
<b>ADJUSTED MOE FOR ORO VALLEY</b>	<b>\$ 68,666</b>
Less Oro Valley Retained Expenditures (transit planning, coordination, local and regional support not being transferred to RTA (FY 2003-04+Growth Factor)	\$ (62,500)
Use of re-branded buses for the provision of transit revenue services.	\$ (11,400)
<b>ORO VALLEY Direct Payment</b>	<b>\$ -</b>