

### **THIRD AMENDMENT TO TRANSPORTATION AGREEMENT**

This THIRD AMENDMENT TO TRANSPORTATION AGREEMENT ("*Third Amendment*"), is made and entered into by and between the **COUNTY OF EL PASO, TEXAS** ("*County*" or "*EPC*"), a political subdivision of the State of Texas, and **PROJECT AMISTAD**, ("*Contractor*"), a non-profit Corporation existing under the laws of the State of Texas. The County and the Contractor are also referred to herein as a "*Party*" and collectively as the "*Parties.*" The Effective Date of this Third Amendment shall be August 9, 2021 ("*Effective Date*").

**WHEREAS**, in order protect public health and reduce human contact during community spread of COVID-19, the Contractor and the County entered into a Transportation Agreement on May 4, 2020 ("*Original Agreement*") to provide Non-Emergency Medical Transportation ("NEMT") for symptomatic and presumable positive COVID-19 clients who lack transportation in the area of El Paso County; and

**WHEREAS**, on March 1, 2021, the Parties entered into the First Amendment to the Agreement to provide NEMT services to vaccination sites and provide safe and sanitary transportation to an increasing number of migrants who would otherwise lack access to a clean and controlled means to travel within the County; and

**WHEREAS**, on March 30, 2021, the Parties entered into the Second Amendment to the Agreement to remove the previous \$45,000 cap on services and allow for the use of up to \$250,000.00 of CARES Act funding through a Subrecipient Agreement; and

**WHEREAS**, on July 30, 2021, Governor Abbot extended the COVID-19 Disaster Declaration for all Counties in Texas; and

**WHEREAS**, on August 21, 2021, the U.S.-Mexico border is expected to re-open which will once more shift local herd COVID-19 immunity levels; and

**WHEREAS**, the expected shift in local herd immunity levels is further compounded by changes in federal immigration policy which may result in an increased number of migrants entering and remaining in the United States; and

**WHEREAS**, in order to adequately prepare for a possible surge of migrants released by U.S. Immigration and Customs Enforcement ("ICE") into El Paso County, during an ongoing global pandemic, the Parties desire to amend their Original Agreement to broaden the scope of migrant transportation related services to protect the health and safety of arriving migrants and residents alike; and

**WHEREAS**, much like the local 2019 migrant surge, El Paso County and assisting non-profits anticipate a need to assist with transporting migrants to various non-profit hospitality sites, transportation hubs, and now, designated isolation sites for migrants that may be infected with COVID-19; and

**WHEREAS**, in order to adequately fund a broader scope of transport services, and a potential increase in the volume of transport, the County seeks to increase its total contract allocation from \$250,000.00 to \$280,000.00 (“allocated funds”); and

**WHEREAS**, the County has determined that allocating County funds in support of Contractor to provide these additional transportation services is in the County’s best interest; and

**WHEREAS**, the use of general funds to securely transport migrants released by ICE, many of whom may be families with small children, to various shelters and transportation hubs is a valid public purpose amidst the ongoing COVID-19 pandemic; and

**WHEREAS**, the County intends to defray migrant transportation related expenditures by applying for reimbursement through the American Rescue Plan Act of 2021 (“ARPA”) Humanitarian Relief grant; and

**WHEREAS**, in order to enable the County to seek ARPA reimbursement for migrant transportation services, the Parties desire to amend the Original Agreement to eliminate use of CARES Act funds for migrant transportation expenditures; and

**WHEREAS**, as permitted by Local Government Code §262.024, the County intends to forgo a competitive procurement because the competitive solicitation requirement will cause unnecessary delay during a time when immediate action is necessary to preserve and protect the public health and safety of El Paso County residents. Waiting for the completion of a competitive procurement would greatly increase the time to respond to the urgent healthcare needs of the residents of El Paso County, specifically, mitigating the risk of community spread of COVID-19. A noncompetitive procurement is appropriate to identify, treat and prevent COVID-19, which has devastated the finances and health and safety of the entire population of the region; and

**WHEREAS**, the Parties wish to enter into this Third Amendment in order to reflect these intentions.

**NOW, THEREFORE**, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Adoption of Recitals. The above stated recitals are incorporated herein by reference, are made a part of this Third Amendment and shall be as effective as if repeated verbatim.
2. Amendment. This Third Amendment amends portions of the Second Amendment which restated, amended and replaced the Original Agreement.
3. Effective Date & Term of the Agreement. The Effective Date of this Third Amendment shall be August 9, 2021; however, for purpose of the Parties’ Agreement, as amended, all migrant related transportation services provided on and after March 1, 2021, shall be paid through the County’s General Funds and not be subject to CARES Act Subrecipient Provisions.

Unless this Agreement is extended by the Parties, services under this Agreement will continue through December 31, 2021, unless allocated funding exhausts or the Agreement is mutually dissolved prior to such date. The County will provide fifteen (15) days' written notice if the County desires the Contractor to provide some or all services subject to this Agreement past December 31, 2021 and until such time as the remainder of the allocated funds are depleted. Any County elected extension past December 31, 2021, shall be paid for through General Funds or a subsequently identified eligible funding source. In the event of an extension of corresponding federal fund eligibility periods, the Parties may amend this Agreement to modify the term of the Agreement.

4. Subrecipient Provisions. The Parties' Original Agreement, as amended by the Second Amendment, is amended to eliminate CARES Act Subrecipient obligations for migrant transportation services rendered on or after March 1, 2021. With the exception of migrant related transportation, all other transport subject to the Parties' agreement, shall continue to be paid through federal CARES Act funds and remains subject to CARES Act Subrecipient obligations.
5. Defined Terms. The following references throughout the Agreement are hereby amended as follows:
  - a. "Program Funds" is amended to read "CARES Act Program Funds";
  - b. "County Funds" is amended to read "County CARES Act Funds";
  - c. "Covered Period" is amended to read "CARES Covered Period."
6. Article II, Section 2 (Description of Services), Section 3 (Referral Process), and Section 4 (Fees for Service) are hereby amended and replaced with the following:

2. Description of Services. Services to be provided by the Contractor to County shall consist of providing NEMT services in the County as follows:

- a. **Positive and Presumptive Positive COVID-19 NEMT.** Contractor agrees to provide NEMT services to positive, symptomatic and/or presumable positive COVID-19 clients, to include migrants, within the El Paso County.
  - 1) Contractor agrees to provide NEMT services to clients who reside outside the city limits but within El Paso County and migrants lacking housing or whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations to residents in transitional housing within El Paso County, irrespective of whether such housing is within County limits. Clients must reside in one of the four El Paso County precincts and migrants' pick-up location must be within El Paso County lines.

- 2) Contractor agrees to provide NEMT services for symptomatic and/or presumable positive COVID-19 clients, including migrants, to and from medical appointment, dialysis centers, and COVID-19 drive-through screening locations only. Contractor will not transport clients to other testing facilities that are not drive-through locations.
  - 3) Contractor additionally agrees to provide, upon the County's request, the following NEMT services to migrants:
    - i. Transportation from El Paso ports of entry to designated, local hospitality sites or quarantine and isolation sites; and
    - ii. Transportation to and from various local hospitality sites.
- b. Scheduled NEMT.** Contractor agrees to provide NEMT services, on an on-demand basis ("**Scheduled NEMT**"), as identified by the County, related to mitigating the spread and transmission of COVID-19. This includes but is not limited to, transporting individuals identified by the County, including migrants, to and from COVID-19 vaccination sites and upon the County's request, transporting migrants released by ICE into El Paso County in a manner that adheres to COVID-19 public health precautions. The County may request that Contractor provide the following additional transportation to migrants:
- i. Transportation from ports of entry or other designated locations within El Paso County lines to local hospitality sites;
  - ii. Transportation to and from various designated, local hospitality sites;
  - iii. Transportation from various designated, local hospitality sites, and once a past positive or presumptive positive migrant is released from isolation or quarantine, from local quarantine and isolation sites to various transportation hubs, including but not limited to, the El Paso International Airport, and Greyhound station;
  - iv. Transportation from local hospitality sites to designated hospitality sites within El Paso County lines;
  - v. Other local transportation as requested by the County who is in coordination with the Annunciation House, a local non-profit assisting migrants to typically depart to their intended destination within 72 hours of arrival.
- c.** The Parties understand that NEMT involving the transportation of migrants shall be largely on an on demand basis, and dependent on requests received by various groups including but not limited to the Annunciation House and its affiliates, local non-profits, the Office of Emergency Management

(“OEM”) and ICE. The County shall strive to provide Contractor as much notice of migrant transportation requests as possible in order to allow the Contractor to provide efficient and cost effective transportation.

- d. Contractor agrees to hire experienced Drivers whose background records have been checked and who have had training in the following areas, including but not limited to: Defensive Driving, Passenger Assistance Safety and Sensitivity, Wheelchair Securement, how to call for emergency services. Drivers must have completed a Physical and passed a Drug Screening Test and a Criminal History Check.
  - e. Contractor must have vehicles that comply with all applicable state and federal laws, including the Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles (36 C.F.R. 1192), Federal Motor Vehicle Safety Standards (49 C. F. R. 571).
  - f. Contractor agrees to provide the transportation services on designated vehicles that adhere to all public health COVID-19 guidelines, and will ensure that all vehicles used to transport COVID-19 positive clients are decontaminated. For transport of COVID-19 positive clients, Contractor agrees to decontaminate the vehicles according to current public health COVID-19 guidelines.
  - g. Contractor agrees to properly train drivers in donning and doffing Personal Protective Equipment (PPE). Contractor agrees to provide its drivers with PPE as follows: gloves, N95 masks, face shields, gowns, and biohazardous disposal trash bags. Note: Shortage of PPE may cause the Contractor to suspend services until the PPE is replenished.
3. Referral Process.
- a. **Positive and Presumptive Positive COVID-19 NEMT.** Clients, to include migrants, must be symptomatic and/or presumable or positive COVID-19 clients to be eligible for NEMT services.
    - i. In accordance with current local, state and federal laws regarding face coverings, the Contractor may require individuals wear some form of face covering such as a homemade mask, scarf, bandana, or handkerchief over their nose and mouth the entirety of the time that the individual is accepting services from the Contractor.
    - ii. Clients or designee must call (915) 532-3415 and notify the Contractor reservationist that NEMT services are being requested.
    - iii. Clients must provide the zip code to validate eligibility. The zip codes listing is included in Attachment 1. This provision does not apply to migrants whose temporary housing

accommodations may be located anywhere, including but not limited to within El Paso County lines.

- iv. The transport destination must be to one of the following: medical appointment, dialysis center, COVID-19 drive-through screening location, or a quarantine or isolation location designated by OEM for migrants. Contractor will not transport clients to other testing facilities that are not drive-through locations.
- v. Contractor will call the client one day prior to confirm the appointment.
- vi. Migrant transportation is dependent on fluctuating numbers of arriving migrants, and as such, the County, or its designee will notify the Contractor when transportation services are needed and the locations for pick-up and drop-off.
- vii. Contractor will schedule the trip and NEMT services will be provided.
- viii. Clients must cancel within a 24-hour notice.

**b. Scheduled NEMT.**

- i. County or designee will contact Contractor that NEMT services are being requested and provide details regarding the transportation needs.
- ii. Services shall be scheduled by the County or designee with 24 hours' notice to Contractor, as allowed. In the event of an unforeseen or emergency event, the County may request service with less than 24-hour notice and Contractor may accommodate the request if resources are available.
- iii. In accordance with current local, state and federal laws regarding face coverings, Contractor may require individuals receiving transportation services to wear some form of face covering such as a homemade mask, scarf, bandana, or handkerchief over their nose and mouth for the entirety of the time that he or she is accepting services from the Contractor.
- iv. Contractor will make available a disposable face covering to an individual lacking a face covering at the time of boarding NEMT. Face coverings will be provided by the County to the Contractor on an as-needed basis.

**4. Fees for Service.**

- a. The prices for Contractor's services are as follows:

i.) **Positive or Presumptive Positive COVID-19 NEMT. El Paso County, Texas:** Service cost per trip of transport of symptomatic and/or presumable or positive COVID-19 clients, including migrants, is \$375.00 per shuttle. Contractor may need to make several stops to collect and transport positive or presumptive positive COVID-19 migrants. When possible, and depending on the request of the County or designee, Contractor shall strive to minimize transportation costs and trips by taking the maximum number of passengers each trip, within public health COVID-19 guidelines. Costs subject to this subsection include:

- a) Hazardous duty pay for drivers.
- b) The cost to replenish Personal Protective Equipment (PPE).
- c) PPE issued to drivers includes: gloves, N95 masks, face shields, gowns, and biohazardous disposal trash bags.
- d) Training of staff. Drivers have received thorough training on how to don and doff PPE equipment and dispose of it properly.
- e) Hazardous Waste Disposal Services by a third party. Contaminated PPE cannot be disposed of in a regular dumpster. Contractor will contract this service out and have the contaminated PPE disposed of properly.
- f) A revenue service vehicle will be out of service until the vehicle has been decontaminated according to current public health guidelines.
- g) Cost to have the revenue service vehicle be decontaminated.

b. **Scheduled NEMT. El Paso County, Texas:** Service cost per hour is \$48.00 per hour that a transit vehicle is in service providing general NEMT services. County or designee will provide Contractor preferably with 24 hour advance notice. On demand vaccination and migrant transportation services will be accommodated as scheduled/staffing permits to allow Contractor to prepare for operational assistance. However, unforeseen circumstances may arise and the County may request service with less notice than previously stated and Contractor will, to the best of its ability, work to fulfill the service request.

c. Contractor maintains the right to cancel a scheduled trip with 24-hour notice if Contractor vehicles are not available due to driver shortages, PPE shortage, or other unforeseen situations that may arise.

- d. Contractor shall submit a detailed invoice to County every 14-day period. County shall reimburse Contractor within thirty (30) working days after receipt of invoice.
- e. The Parties acknowledge and recognize that beginning on March 1, 2021, the source of Funds for migrant related transportation are County General Funds for which the County shall seek reimbursement through ARPA Humanitarian Relief grant funds. All other transportation made subject to this Agreement is paid through CARES Act funds. The Parties agree that CARES Act Program Funds may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021. Further, the Parties understand that migrant related expenses through ARPA, Humanitarian Relief grant funds are only available for purpose of this Agreement from March 1, 2021 through December 31, 2021.

With regard to all non-migrant transport obligations subject to the CARES Act, Contractor will comply with all CARES Act Program Funds requirements listed under Section 5001 of the CARES Act (“**Program Fund Requirements**”). In addition, the Contractor will perform any obligations reasonably requested that are necessary to ensure that the County complies with the CARES Act Program Fund Requirements and United Way ARPA, Humanitarian Relief reimbursement requirements for migrant related transport.

7. Article III, Section 1 (Grant and Funding to Contractor) and Section 4 (Reports) are hereby amended and replaced with the following:

- 1. Grant and Funding to Contractor. Subject to the terms and conditions of this Agreement, the County agrees to grant and transfer to the Contractor an amount not to exceed \$280,000.00 for all transport subject to this Agreement, irrespective of the funding source.
  - a. Migrant Transportation. For purposes of this Article and Agreement, beginning on March 1, 2021, migrant related travel will be paid through County General Funds, and are therefore are not subject to the CARES Act Subrecipient requirements. The County will disburse the County General Funds within 30 days of receipt of all necessary documentation, including required reporting, and documentation showing expenses and costs incurred as a direct result of transporting the migrants. Expenditures must be proportional to services provided. The Contractor must submit an invoice and proof of incurred expenses. The County will subsequently seek reimbursement through ARPA, Humanitarian relief grant funds. In the event ARPA, Humanitarian Relief grant funds are not granted to the County or



exhausted prior to December 31, 2021, the County may provide notice to the Contractor to immediately discontinue migrant related transportation. **The Parties understand that current ARPA, Humanitarian relief grant fund reimbursement eligibility periods end December 31, 2021, and therefore, the County will provide fifteen (15) days' notice of whether the Contractor shall continue to provide migrant transport related services subject to this Agreement past December 31, 2021 through County General Funds or subsequently identified eligible funding source up to the remaining balance of allocated funds.**

- b. Non-Migrant Transportation. Subject to the terms and conditions of this Agreement, the County agrees to grant and transfer to the Contractor CARES ACT funding ("County CARES Funds") for all transportation subject to this Agreement that is not covered by subsection "a" above. The County will disburse County CARES Funds on a reimbursement basis with disbursements taking place within 30 days upon receipt of the all necessary documentation showing expenses and costs incurred as a direct result of COVID-19 and pursuant to this Agreement, and not otherwise granted or reimbursed. Prior to the County being obligated to issue any Sub-grant Amount disbursements, the Subrecipient must submit an invoice and proof of incurred expenses. The County may withhold Sub-grant disbursements from the Subrecipient if the Department director reasonably believes that the Subrecipient (1) has not complied with all obligations under this Agreement, the Program Funding Requirements, and/or Granting Agency Requirements, (2) the Subrecipient has breached any representations and warranties under this Agreement, (3) the submitted expenditures are not in accordance to the approved Program Budget as provided in this Agreement, (4) the expenses are not considered Allowable Expenses, (5) the expenses have not been incurred, or (6) the proof of expenses provided by the Subrecipient are not adequate to confirm that the expenditure meets the requirements of this Agreement. Subrecipient's expenditures must be proportional to services provided. **In accordance with the CARES Act, the County will not reimburse Subrecipient with Program Funds for any expenses incurred after December 31, 2021, and therefore, County will provide fifteen (15) days' notice of whether the Contractor shall continue to provide non-migrant related services subject to this Agreement past December 31, 2021 through County General Funds or subsequently identified eligible funding source up to the remaining corresponding balance of allocated funds.**

4. Reports. The Contractor shall also provide expenditure and service reports for every 14-day period until December 31, 2021.

- a. For non-migrant related transportation, the report should include the number of people transported, type of transport, trip origin and destination information related to the transport pursuant to this Agreement each report cycle. For trip origin and destinations to individual residential homes, the Contractor shall only report the zip code or community name for the requirements of this section.
  - b. For migrant related transportation, the report should include a daily log of the number of unique (unduplicated) migrants served, type of transport, trip origin and destination information related to the transport pursuant to this Agreement each report cycle. For trip origin and destinations to non-profit hospitality sites and OEM isolation sites, the Contractor shall only report the zip code or community name for the requirements of this section. Each report shall also include the number of total migrants served for the respective reporting cycle, and the total reimbursement cost for the services rendered. Documentation supporting the report made subject to this subsection must be maintained and may be requested by the National Board of program auditors.
8. Except as amended herein, the Second Amendment, including attachments, which restated, amended and replaced the Original Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment.

**COUNTY OF EL PASO:**

\_\_\_\_\_  
By: Ricardo A. Samaniego  
El Paso County Judge

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

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Jose Landeros  
Director of Planning & Development Department

*(Signatures continue on next page.)*

**APPROVED AS TO LEGAL FORM:**



\_\_\_\_\_  
Ana Schumacher  
Assistant County Attorney

**PROJECT AMISTAD**

By: \_\_\_\_\_  
Andrea Ramirez  
Chief Executive Officer

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