

# **MEMORANDUM OF AGREEMENT**

**Between**

**THE U.S. DEPARTMENT OF TRANSPORTATION**

**FEDERAL TRANSIT ADMINISTRATION**

**And**

**THE U.S. DEPARTMENT OF HOMELAND SECURITY**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

## **1. PARTIES**

The “Parties” to this Memorandum of Agreement (MOA) are the Federal Transit Administration (FTA), on behalf of the U.S. Department of Transportation (DOT) and the Federal Emergency Management Agency (FEMA) on behalf of the U.S. Department of Homeland Security (DHS), each individually, “Party” or “Department.”

## **2. AUTHORITY**

FTA and FEMA enter into this MOA pursuant to:

- a. Section 20017(b) of Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21, Pub. L. 112-141, July 6, 2012).
- b. Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.
- c. 49 U.S.C. 5324

## **3. PURPOSE**

The purpose of this MOA is to coordinate the roles and responsibilities of FTA and FEMA in providing assistance for public transportation, including the provision of public transportation service and the repair and restoration of public transportation systems in areas for which the President has declared a major disaster or emergency.

#### 4. BACKGROUND

Transportation is a key concern before, during, and after a major disaster or emergency. Public transportation resources can be used to assist with evacuating residents, returning people to their homes when it is safe, and establishing a sense of normalcy when the danger has passed by restarting service which allows people to get back to their daily activities. Public transportation agencies are an integral part of the communities they serve and are typically involved with emergency planning. Public transportation agencies are vulnerable to natural and man-made disasters. As an example, hurricanes can destroy catenary systems and rail systems, as well as flood maintenance facilities and vehicles. Such damage can delay the provision of service after an emergency or major disaster. The ability to quickly make emergency and permanent repairs in order to restart service, and to be quickly reimbursed for those repairs, is critically important.

MAP-21 authorized FTA's Emergency Relief Program at 49 U.S.C. 5324. With the authorization of this program, Congress provided FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Emergency Relief Program allows FTA to make grants for eligible public transportation capital and operating costs in the event of a natural disaster that affects a wide area or a catastrophic failure from any external cause. The FTA Emergency Relief Program has different eligibility criteria than FEMA's Public Assistance (PA) Program.

Section 20017(b) of MAP-21 requires FTA and FEMA to develop this memorandum of agreement. Section 20017(b)(4) requires FTA and FEMA to consult with State, local, and tribal governments (including public transportation systems) that have experienced a major disaster or emergency, and to review after action reports relating to major disasters, emergencies, and exercises, in order to identify areas where coordination between FTA and FEMA should be improved. FTA conducted telephone interviews with several State DOTs and public transportation agencies that have experienced major disasters or emergencies. In addition, FTA and FEMA reviewed numerous after action reports addressing large events such as Hurricanes Katrina, Rita and Irene, regional and localized events such as earthquakes and snowstorms, as well as after action reports for national, regional and local exercises. FTA and FEMA also reviewed the Government Accountability Office Report 08-243: Emergency Transit Assistance: Federal Funding for Recent Disasters and Options for the Future. Finally, FTA and FEMA learned important lessons in responding to Hurricane Sandy, and those lessons are incorporated into this MOA.

In the interviews and after action reports, some of the frequently mentioned areas for improvement for FTA and FEMA included: reduce the length of time for obligation of funding, including through mission assignments and FEMA's PA Program; reduce the length of time between the performance of eligible work by a public transportation agency and receipt of payment; clearly define the public transportation operating and capital costs that are eligible for FEMA funding; and clearly define FTA's and FEMA's roles. Prior to the establishment of

FTA's Public Transportation Emergency Relief Program, when emergencies and major disasters occurred, many public transportation agencies contacted FTA for assistance, and FTA directed them to FEMA. Under the PA Program a public transportation agency is a subgrantee and therefore receives its funding through the Grantee, the State, with which many public transportation agencies do not have an ongoing funding relationship. Therefore, even after federal obligation of the funds, it could take time before the funds were received by the public transportation agency. The establishment of FTA's Public Transportation Emergency Relief Program and the execution of this MOA will mitigate many of these areas of concern.

Some weather or other events will cause serious damage to a public transportation system but may not be serious enough to warrant a Presidential declaration of emergency or major disaster. These events are eligible for assistance under FTA's Emergency Relief Program when a Governor has declared an emergency and the Secretary concurs, but are not eligible for assistance under FEMA's PA Program. Therefore, this MOA applies only to those situations in which the President has declared an emergency or major disaster.

## **5. PRINCIPLES OF AND GENERAL AREAS FOR COOPERATION**

**a. Principles.** The Parties agree to the following principles:

- 1) FEMA has primary federal responsibility for emergency preparedness, response, and recovery in major disasters and emergencies declared under the Stafford Act, and DOT plays a supporting role, providing technical assistance and assisting FEMA during the response to and recovery from such declared events.
- 2) While FEMA has the overall lead for emergency preparedness, response and recovery, both Parties have an interest in supporting public transportation agencies before, during and after major disasters and emergencies. Congress recognized FTA's experience and expertise in supporting public transportation agencies as they respond to and recover from emergencies and disasters, as well as the ongoing funding relationship FTA has with transit agencies, by establishing the Public Transportation Emergency Relief Program codified at 49 U.S.C. 5324.
- 3) The Parties' respective Chief Financial Officers will communicate with each other concerning their annual, as well as any supplemental, appropriations and available funding for preparedness, response, and recovery in order to present a coordinated position on public transportation emergency response, to avoid duplicative requests for funding, and to ensure a streamlined reimbursement process. In situations where appropriations are pending and the source of funding is uncertain, the appointed Federal Coordinating Officer and the FTA Administrator, or their respective

designees, will coordinate closely in the development of grant projects and scopes of work to ensure that such information will be useful regardless of which agency ultimately funds an individual project or projects.

- 4) Section 5324(d)(2) of title 49, U.S.C. provides that FTA funds available to address an emergency shall be made only for expenses that are not reimbursed under the Stafford Act. When funding is available, FTA will provide funding to public transportation agencies for costs eligible under section 5324, even if such costs may otherwise be eligible under FEMA's PA Program, provided the costs have not been reimbursed by FEMA. All funding, under the Stafford Act and through section 5324, is subject to the availability of appropriations.
- 5) Funding under FEMA's PA Program is available only for major disasters and emergencies declared by the President pursuant to the Stafford Act.
- 6) Under a Stafford Act declaration, when funding is available for section 5324 or otherwise appropriated to FTA for repair, replacement, or restoration related to public transportation, FTA will be the primary payor of expenses incurred by public transportation agencies as a result of the emergency or major disaster.
- 7) Provision of evacuation services through Direct Federal Assistance will continue in the manner established by the National Response Framework and the 2007 Memorandum of Understanding between DOT and DHS (or any successor policies or arrangements). Such services must be associated with either a declared major disaster or emergency, which includes pre-disaster emergency declarations made pursuant to FEMA Policy 010-4, Pre-Disaster Emergency Declaration Requests (or successor policy). Reimbursement is based on FEMA PA eligibility criteria.
- 8) In any declared Stafford Act event when appropriations are available to the Public Transportation Emergency Relief Program, the designated Federal Coordinating Officer shall request, and the FTA shall provide, an FTA Liaison Officer to support the Joint Field Office established for the incident. The Federal Coordinating Officer and FTA Liaison Officer shall expeditiously notify each other of all requests for public transit-related assistance of any kind from State, tribal, or local governments, establish a joint tracking system for such requests within the Joint Field Office, and ensure that such requests are managed appropriately to ensure that FTA and FEMA do not reimburse an entity for the same activity.
- 9) During Stafford Act events FEMA may provide Direct Federal Assistance by tasking other federal agencies, including FTA, through Mission Assignments and interagency

agreements. FTA's Administrator or his/her designee and FEMA's Assistant Administrator for Response and Assistant Administrator for Logistics will work together to develop appropriate pre-scripted Mission Assignments that will ensure the expedited provision of such assistance.

10) Costs associated with events that do not result in a Stafford Act declaration are not eligible for reimbursement from FEMA. FTA may provide reimbursement for such costs pursuant to the guidelines discussed in section 6 below.

**b. Cooperation.** As the need arises, FTA and FEMA will continue to review their respective legal authorities, core competencies, and capabilities to identify specific areas of common interest in which the Parties may benefit from specific designation of roles and responsibilities in accordance with the principles set forth in this MOA.

Specific tasks and areas of responsibility that are appropriate for cooperation will be documented in guidelines.

**c. Obligations.** This MOA does not impose specific program, resource, or budgeting obligations on either Party.

## **6. INCORPORATION OF GUIDELINES BY REFERENCE**

FTA and FEMA will cooperatively develop guidelines for State, local and tribal governments, including public transportation systems, related to: 1) eligible expenses for a major disaster or emergency; 2) reimbursement procedures that speed the process of applying for assistance; and 3) distributing assistance for public transportation systems, under the Stafford Act and 49 U.S.C. 5324. Such guidelines are hereby incorporated by reference into this MOA.

## **7. COMMUNICATIONS**


Effective and thorough communications among FTA and FEMA headquarters and regional staff, other Federal partners, Congress, and State and local partners, is vital to the success of FTA's and FEMA's planning and coordination activities before, during and after emergencies and major disasters. FTA and FEMA will work together to develop a communications protocol and implement an effective communications program to ensure all interested parties are aware of their respective responsibilities for emergency preparedness, response, and recovery related to public transportation matters.

**8. OTHER PROVISIONS**

- a. Severability.** Nothing in this MOA is intended to conflict with current statutes, regulations, orders, or directives of FEMA or FTA, or any other Federal agency or entity. If a provision of this MOA is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOA will remain in full force and effect.
- b. Rights and Benefits.** Nothing in this agreement is intended to diminish or otherwise affect the authority of any agency to carry out its statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or officers, State agencies or officers carrying out programs authorized under Federal law, or any other person.
- c. Amendment and Modification.** This MOA may be amended or revised at any time by written agreement of the Administrator of the Federal Transit Administration and the Administrator of the Federal Emergency Management Agency.
- d. Period of Agreement/Termination.** This MOA will be effective as of the date of final signature by both Parties and, as this agreement is mandated by section 20017(b) of MAP-21, will remain in effect indefinitely. The Parties will review the MOA at least every five years.


APPROVED BY:

FEDERAL TRANSIT ADMINISTRATION

  
\_\_\_\_\_  
FTA Administrator

March 4, 2013  
Date

FEDERAL EMERGENCY MANAGEMENT AGENCY

  
\_\_\_\_\_  
FEMA Administrator

3/4/2013  
Date