# GENERAL MEETING OF THE BOARD OF DIRECTORS OF THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

#### **RESOLUTION NO. 20-013**

# APPROVE AN INTERLOCAL AGREEMENT WITH THE CAPITAL AREA RURAL TRANSPORTATION SYSTEM TO PROVIDE FUNDING FOR THE EASTSIDE BUS PLAZA

WHEREAS, both the Central Texas Regional Mobility Authority (Mobility Authority) and the Capital Area Rural Transportation System (CARTS) are authorized to design and construct transportation projects to advance regional mobility and connectivity; and

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, CARTS is currently developing a bus plaza which will include a one-story terminal building providing passenger waiting areas, restrooms, ticketing facilities, and a one-way bus driveway with bus boarding platforms to serve CARTS interregional routes as well as several Capital Metropolitan Transportation Authority (Capital Metro) local bus routes (Eastside Bus Plaza); and

WHEREAS, CARTS will be providing partial funding for the Eastside Bus Plaza and has secured additional financial commitments from the Capital Area Metropolitan Planning Organization, Capital Metro, and the City of Austin; and

WHEREAS, CARTS has requested that the Mobility Authority contribute \$400,000.00 for construction of the Eastside Bus Plaza; and

WHEREAS, the Eastside Bus Plaza is in close proximity to the Mobility Authority's 183 South Project, and Mobility Authority roadways will be used by CARTS for travel to and from the facility; and

WHEREAS, the Executive Director and CARTS staff have negotiated an interlocal agreement to provide for the Mobility Authority's funding contribution as well as to allow for opportunities for the Mobility Authority to occupy retail space to display branding and advertising materials for the Mobility Authority, its pay-by-mail program, its affiliated electronic tag payment programs or other customer service programs at the Eastside Bus Plaza; and

WHEREAS, the Executive Director recommends that the Board approve the proposed interlocal agreement to provide \$400,000.00 for development and construction of the Eastside Bus Plaza, in the form or substantially the same form attached hereto as <u>Exhibit "A"</u>.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves the proposed interlocal agreement with the Capital Area Rural Transportation System and authorizes the Executive Director to finalize and execute the interlocal agreement on behalf of the Mobility Authority in the form or substantially the same form as Exhibit "A".

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of February 2020.

Submitted and reviewed by:

Geoffrey Petrov, General Counsel

Approved:

Robert W. Jenkins, Jr.

Chairman, Board of Directors

### Exhibit A

# INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY AND CAPITAL AREA RURAL TRANSPORTATION SYSTEM

This Interlocal Cooperation Agreement (this "Agreement"), dated effective as of the last signature date below (the "Effective Date"), is made and entered into by and between the Central Texas Regional Mobility Authority, a political subdivision operating under Chapter 370 of the Texas Transportation Code ("CTRMA"), and the Capital Area Rural Transportation System, a rural transit district and political subdivision of the State of Texas organized under Chapter 458 of the Texas Transportation Code ("CARTS"). CTRMA and CARTS are referred to in this Agreement individually as a "Party" and collectively as the "Parties."

#### RECITALS

- 1. CARTS intends to develop and operate a bus plaza for the integration of its regional routes at 363 Shady Lane, Austin, Texas, which will include a one-story terminal building providing passenger waiting areas, restrooms, ticketing facilities, and a one-way bus driveway with bus boarding platforms to serve CARTS interregional routes as well as several Capital Metropolitan Transportation Authority ("Capital Metro") local bus routes. The project will serve as a hub providing interconnections with and between CARTS rural or regional bus routes and Capital Metro's local routes. The facility will be located on land owned by TxDOT and is referred to herein as the "Eastside Bus Plaza" or "EBP".
- 2. CARTS and CTRMA agree that conducting certain joint operations with Capital Metro at the Eastside Bus Plaza will benefit the general public as it will provide transportation options enhancing mobility in furtherance of the Parties' respective missions. The Parties further agree that the Eastside Bus Plaza will be in close proximity to the CTRMA's 183 South Project, and that it will benefit users of that project by facilitating additional mobility options to travel through the 183 South corridor.
- 3. Funding for development and construction of the EBP, including roadway rehabilitation and signal work, will come from multiple sources as set forth below:

Funding Source and Use	Amount
CARTS - Project Development and Construction	\$2,000,000
CAMPO - Project Development and Construction	\$3,000,000
Capital Metro - Project Development and Construction	\$1,500,000
City of Austin - Roadway Rehabilitation and Signals	\$640,000
Mobility Authority - Project Development and Construction	\$400,000
TOTAL	\$7,540,000

In addition to the foregoing, the project will be located on property owned by the Texas Department of Transportation ("TxDOT") subject to an agreement (see Section 2.A.(i) below) valued at \$750,000.00.

- 4. CARTS has procured construction services for the EBP and has executed a contract therefore in the amount of \$5,599,306.02.
- 4. CTRMA is willing to contribute certain funding to the construction of the Eastside Bus Plaza in exchange for the consideration granted to CTRMA by CARTS as is outlined in this Agreement.
- 5. The Parties intend to enter into this Agreement to set forth each Party's responsibilities with respect to the development, operation and maintenance of the Eastside Bus Plaza pursuant to the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.

#### **AGREEMENT**

IN CONSIDERATION OF the duties, obligations and covenants of each party to the other, and other good and valuable consideration, CARTS and CTRMA agree as follows:

#### 1. CTRMA'S ROLES AND RESPONSIBILITIES

- A. CTRMA will make available to CARTS the sum of Four Hundred Thousand Dollars (\$400,000.00) on a reimbursement basis to fund CARTS' work associated with the construction of the EBP. CTRMA participation will be invoiced by CARTS once a month, such payments being an amount equal to CTRMA's proportionate share of the construction price but not to exceed, in the aggregate, \$400,000.00. Based on a contracted construction price of Five Million Five Hundred Ninety-Nine Thousand Three Hundred Six Dollars and Two Cents (\$5,599,306.02), CTRMA's share of the construction price is 7.14%. Each month CARTS will send an invoice and supporting documentation related to the total of construction costs actually incurred for the preceding month, and CTRMA shall (subject to review and confirmation) pay 7.14% of the total amount. Such invoices shall include adequate supporting documentation for those costs associated with project construction, oversight and construction services associated with the EBP.
- B. In addition to the financial assistance described above, CTRMA will provide adequate staff resources to facilitate timely invoice review and prompt payment during the construction of the EBP. This obligation shall terminate after all invoices pertaining to the construction of the EBP have been paid or otherwise settled. CTRMA, including its representatives, will have access to the project in order to inspect progress and confirm work performed provided that any such inspections shall not interfere with ongoing work.
- C. CTRMA's obligations as outlined in this Section shall be expressly contingent on CARTS meeting each of its responsibilities as are set forth in Section 2 below.

#### 2. CARTS' ROLES AND RESPONSIBILITIES

A. CARTS roles and responsibilities in the design, construction and completion of the EBP include each of the following:

- (i). Maintaining the necessary rights from TxDOT to use land for the project. Under the TxDOT MOU and that certain Multiple Use Agreement by and between CARTS and TXDOT, dated effective May 4, 2017, (the "TxDOT MUA"), TxDOT consented to CARTS operating transit services on the Property for an initial term of forty (40) years. CARTS represents that the TxDOT MOU and TxDOT MUA permits CARTS to use the Property for constructing and operating the EBP and mass transit services in accordance with this Agreement. CARTS will take all appropriate measures to remain in compliance with the TxDOT MOU and TxDOT MUA and will prevent any interference with CARTS' operations at the EBP.
- (ii). Performing its duties and responsibilities under its interlocal agreement with Capital Metro so as to ensure CARTS reamins eligible to receive funding in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) from the Capital Metro.
- (iii). Taking such actions as are necessary to secure and receive funding, or in-kind contributions or services, in an amount of up to Six Hundred Forty Thousand Dollars (\$640,000.00) for work on signals and/or pavement from the City of Austin.
- (iv). Taking such actions as are necessary to secure and receive allocated funding of Three Million Dollars (\$3,000,000.00) from the Capital Area Metropolitan Planning Organization ("CAMPO").
- (v). Contributing a minimum of Two Million Dollars (\$2,000,000) of CARTS' own funds for the planning, design and construction of the EBP.
- (vi). Development of plans to ensure access to adequate funding for continued operation and maintenance of the EBP following its commencement of operations, either from funding provided by CARTS or made available to CARTS from third-party sources, for a period of not less than ten (10) years.
- (vii). Providing adequate staff for coordination of the planning, design and construction of the EBP.
- (viii). Incorporating the operations and maintenance plan associated with the EBP into CARTS' fiscal operating budget following the commencement of operations at such facility.
- (ix). Developing branding and related marketing materials for the EBP, including but not limited to route maps and flyers for communications to the public regarding the service and benefits thereof. Such branding and marketing materials shall note the participation of CTRMA in the Project.
- (x). Providing quarterly reports to CTRMA on the status of development and construction phase of the Project.
- (xi). Providing opportunities, at no further cost to CTRMA, for use of retail space and coordinating or arranging the necessary staffing resources for CTRMA to offer electronic tag, pay-by-mail or other toll payment program customer service functions at the Eastside Bus Plaza. CTRMA shall be responsible for costs of any finish-out of the retail space for its use and for staffing the facility for the purpose of CTRMA conducting its business.
- (xii). Providing opportunities for CTRMA to display branding and advertising materials for CTRMA, its pay-by-mail program, its affiliated electronic tag payment programs or other customer service programs at the Eastside Bus Plaza.

(xiii). Recognizing CTRMA's contribution to the project, including CTRMA's approved logo on the materials related to the opening or initial promotion of the Eastside Bus Plaza.

#### 3. **PERMISSION FOR USE.**

CARTS shall grant permission and a license to CTRMA's employees, or contractors, to use the EBP to allow CTRMA to offer electronic tag, pay-by-mail or other toll payment program customer service functions at the EBP. If so CTRMA elects to conduct such activities, it's employees may utilize all areas of the EBP, as appropriate, except that outside of CARTS' operating hours, the only areas within the Passenger Terminal Building at the EBP that CTRMA's employees and contractors may access are a designated bathroom, operator break room and, with respect to a limited number of CTRMA IT employees and contractors, the IT/telecommunications area.

CTRMA's rights to enter upon and use the EBP is limited to the use described above and extends to and includes CTRMA's invitees and members of the general public. CTRMA will not use or occupy any part of the EBP for any purpose or in any manner which (i) is unlawful or in violation of any applicable legal or governmental requirement, ordinance or rules; (ii) may be dangerous to persons or property, including, without limitation, the storage of any flammable or hazardous substances; or (iii) conflicts with any covenant or obligation of CTRMA under any agreement relating to the EBP or may create a nuisance or disturbance to the surrounding property owned and/or operated by CARTS.

#### 4. TERM.

Unless terminated early in accordance with the terms of this Agreement, the term of this Agreement (the "**Term**") will commence on the last date of execution the Agreement by CARTS and CTRMA ("Effective Date") and continue thereafter for a term of ten (10) years at which time this Agreement shall automatically terminate. The Parties may agree to extend the Term by the execution of a written amendment to this Agreement.

#### 5. COMPLIANCE WITH LAW AND CONTRACTUAL OBLIGATIONS.

In their respective use and operation of the EBP, the Parties shall comply with all applicable city, state, federal, City ordinances, rules and regulations regarding its work, and OSHA regulations. Each Party, at its cost, shall obtain all necessary or appropriate licenses and permits related to its operations at the EBP.

This Agreement and the Parties' rights under this Agreement are subject the authority of the Federal Transit Administration, the Texas Department of Transportation, and the requirements of any federal grants obtained by the Parties in connection with the EBP.

#### 6. UTILITY COSTS.

CARTS will be responsible for all utility costs for the development and operation of the EBP.

#### 7. **TERMINATION:**

A. <u>Termination for Convenience</u>. Notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon sixty (60) days written notice to

the other for any reason. If CARTS terminates this Agreement for convenience prior to the commencement of operations at the EBP, CARTS will reimburse CTRMA for the total amount of the CTRMA contribution paid as of the termination date.

- B. <u>Termination by CARTS</u>. This Agreement may be terminated by CARTS upon material default by CTRMA in the performance of any covenant or agreement herein required to be performed by CTRMA and the failure of CTRMA to remedy such default within thirty (30) days after receipt of a written notice to remedy the same from CARTS.
- C. <u>Termination by CTRMA</u>. This Agreement may be terminated by CTRMA upon CARTS' default on the performance of any other obligation of CARTS hereunder, and such default has not been cured within thirty (30) days after receipt of written notice of default.
- D. Termination for Failure to Construct. Notwithstanding anything in this Agreement to the contrary, this Agreement will automatically terminate if construction of the EBP has not been completed and/or operations at the EBP have not commenced within eighteen (18) months of the Effective Date hereof (the "Construction/Operations Deadline"), provided that if any delay in completion of construction or commencement of operations is due to regulatory events or the directives of another governmental entity with jurisdiction over the Project (such as direction to stop construction or delay operations due to environmental or archeological issues) or otherwise through no fault or negligence of CARTS, the Parties will meet and confer regarding an appropriate means to address the issues and delays. If an acceptable resolution cannot agreed upon twelve (12) months of the Construction/Operations Deadline, this Agreement will automatically terminate. In the event of a termination under this Section 7.D, CARTS will reimburse CTRMA for the total amount of the CTRMA contribution paid as of the termination date.

#### 8. INSURANCE:

Each Party shall carry worker's compensation insurance for all of its employees who staff the EBP prior to or following commencement of operations at the EBP. In addition, each Party will carry property and casualty insurance coverage for any equipment and furnishings it installs at the EBP.

#### 9. LIABILITY.

TO THE EXTENT ALLOWED BY TEXAS LAW, CARTS AND CTRMA AGREE THAT EACH ENTITY IS RESPONSIBLE FOR ITS OWN PROPORTIONATE SHARE OF ANY LIABILITY FOR ITS NEGLIGENT ACTS OR OMISSIONS FOR CLAIMS, SUITS, CAUSES OF ACTION, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY AND DEATH, ARISING OUT OF OR CONNECTED TO THIS AGREEMENT.

#### 10. ADMINISTRATIVE APPROVALS.

CARTS' General Manager and the CTRMA Executive Director will have the authority to negotiate and execute amendments to this Agreement without further action from the CARTS Board of Directors or CTRMA Board of Directors, but only to the extent necessary to implement and further the clear intent of the respective CARTS Board of Directors' and CTRMA Board of Directors' approval, and not in such a way as would constitute a substantive modification of the terms and

conditions hereof or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by the governing bodies of the Parties.

#### 11. HAZARDOUS MATERIALS

No hazardous materials or toxic substances shall be kept, stored, used or discharged at the EBP. The Parties shall comply strictly with all applicable Federal, State and local laws, ordinances, rules and regulations regarding hazardous materials or toxic substances.

#### 12. ASSIGNMENT

This Agreement shall be personal to the Parties and is not transferable. CTRMA will not subdivide or assign any of its rights to occupy space in the EBP under this Agreement without the prior written consent of the CARTS, which consent may not be unreasonably withheld.

#### 13. NOTICES

All notices required under this Agreement or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party, or an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified and sent to the address set forth below. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. An address may be changed by written notice to the other party.

If to the CTRMA: CTRMA

3300 N Interstate 35 Frontage Rd #300

Austin, TX 78705

Attn: Executive Director

If to the CARTS: CARTS

5300 Tucker Hill Lane Cedar Creek, Texas 78612 Attn: General Manager

#### 14. JURISDICTION AND VENUE

This Agreement is made under the laws of the State of Texas, and any disputes that arise under or concern this Agreement shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles. Venue for any suit at law or in equity involving this Agreement, shall be proper and lie exclusively in Travis County, Texas.

## 15. NON-DISCRIMINATION, AFFIRMATIVE ACTION, AMERICANS WITH DISABILITIES ACT

CARTS agrees that no person, on the grounds of race, color national origin, age, sex or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination, in the use of the Terminal Area. CARTS will comply fully with all provisions of Public Law 101-336, Americans with Disabilities Act of 1990 to the extent applicable.

#### 16. NON-WAIVER OF RIGHTS

Continued performance by either party hereto of the terms of this Agreement following a default shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default and no waiver of such default shall be construed or act as a waiver of any subsequent default.

#### 17. INVALIDITY OF CLAUSES

In the event that any covenant, condition or clause, herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or clause, shall in no way affect any other covenants, conditions or clauses.

#### 18. ATTORNEYS' FEES

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover interest at the maximum lawful rate, reasonable attorneys' fees and court costs and other expenses of litigation.

#### 19. HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

#### 20. RELATIONSHIP

This Agreement establishes the rights and obligations of each party and it is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or a relationship of landlord and tenant between CTRMA and CARTS.

#### 21. ENTIRE AGREEMENT

It is understood and agreed that this instrument contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement and may not amended or modified except in writing signed by both Parties.

#### 22. COUNTERPARTS

This Agreement may be executed in any number of counterparts, including by facsimile or e-mail, with the same effect as if both Parties hereto had executed the same document and delivery by facsimile or other electronic means shall be deemed delivery of this Agreement. All such counterparts shall be construed together and shall constitute one instrument.

#### 23. GOVERNMENTAL IMMUNITY

The Parties are governmental entities organized under the laws of the State of Texas. Nothing contained herein shall be deemed a waiver of any rights or privileges afforded governmental entities under the laws of the State of Texas law or the Texas Constitution.

#### 24. CERTIFICATIONS

The Parties certify that: (a) the obligations and services specified above are properly within the statutory functions and programs of the affected governmental entity; (b) the proposed arrangements serve the interest of efficient and economical administration of the governmental function; (c) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under an Agreement given to the lowest responsible bidder nor is this Agreement prohibited by Texas Government Code, Section 791; and (d) this Agreement neither requires nor permits either party to exceed its duties and responsibilities or the limitations of its authority.

#### 25. PAYMENTS FROM CURRENT REVENUES

The Parties each agree that, in performing the governmental functions contemplated in this Agreement or in paying for the performance of those governmental functions, each party will make that performance or those payments from current revenues legally available to that party. The Parties each affirmatively find that the performance of this Agreement in the common interest of both parties, that undertaking this Agreement will benefit the public and that the division of responsibilities and costs associated with this Agreement fairly and adequately compensate the performing party for its services or functions performed under this Agreement.

(Signature Page Follows)

**IN WITNESS WHEREOF,** this Agreement is hereby executed by CARTS and CTRMA as of the dates set forth below, to be effective as of the Effective Date.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY	CAPITAL AREA RURAL TRANSPORTATION SYSTEM
By: Mike Heiligenstein Executive Director	By: David Marsh General Manager
Date:	Date:



October 30, 2019

Mike Heiligenstein Executive Director Central Texas Regional Mobility Authority 3300 N. IH-35, Suite 300 Austin, TX 78705

RE: Eastside Bus Plaza

363 Shady Lane, Austin Texas 78702

#### THE CARTS DISTRICT

5300 Tucker Hill Ln Austin, TX 78612

> PO Box 6050 Austin, TX 78762

> > 512/481 1011 f 512/478 1110

#### RideCARTS.com

Regional transportation for the non-urbanized areas of Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Travis and Williamson counties. Dear Mr. Heiligenstein:

Since 2017, CARTS has been performing pre-development, design and engineering activities for the construction of a new regional transit hub which will serve as the interface between CARTS' seven Interurban regional bus routes and Capital Metro's local and crosstown bus routes. We also anticipate this will be the nexus for offering improved commuter offerings from the CARTS nine-county district to the metropolitan area. The Eastside Bus Plaza (EBP) is strategically located at the intersection of E. Cesar Chavez Street and Shady Lane, just west of CTRMA's US 183 South improvement project.

Since March 2018 the CARTS EBP team has been actively working with CTRMA engineering staff which has resulted in several suggestions that have been incorporated into the final design of the project. We continue to work with CTRMA staff on preparing for the CTRMA Board of Directors' consideration of financial participation on improvements to the roadways surrounding the EBP site.

We also have had active and ongoing partnerships with TxDOT, Capital Metro, CAMPO and the City of Austin with each providing, respectively, a 40-year lease of the site, technical assistance and coordination, \$3 million of federal funding, and coordinated development review.

Capital Metro views the Eastside Bus Plaza project as a key component of Project Connect, providing for regional connections throughout the Capital Metro and CAMPO areas. In July 2019, the Capital Metro Board of Directors approved an Interlocal Agreement with CARTS which provides \$1.5 million financial participation toward the project's completion as a shared transit hub for the two agencies.



As development has progressed, elements have been identified for which CARTS is seeking cost participation. Our consultants have identified adjacent roadway and multi-modal elements of the project which could be appropriate for CTRMA participation, potentially through the US 183 South project. These elements include construction of (1) traffic signal on E. Cesar Chavez Street at Shady Lane, (2) widening of 500' of E. Cesar Chavez Street along with roadway pavement repair, mill and overlay from the intersection of Shady Lane to E. 5th Street to accommodate a bus only lane and (3) crack seal and micro-seal overlay of E. 5th Street from Shady Lane to Cesar Chavez as well as Shady Lane from E. 5th Street to Cesar Chavez Street. The attached exhibits delineate these elements.

THE CARTS DISTRICT

5300 Tucker Hill Ln Austin, TX 78612

> PO Box 6050 Austin, TX 78762

> > 512/481 1011 f 512/478 1110

RideCARTS.com

Regional transportation for the non-urbanized areas of Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Travis and Williamson counties. On October 11<sup>th</sup>, CARTS issued a Request for Proposal (RFP) for construction of the EBP, with proposals due November 15<sup>th</sup>. Within the RFP, there are "deduct alternates" for the roadway pavement work. This will permit CARTS to determine the cost for roadway paving and signal work which can assist us in working with CTRMA staff in determining potential CTRMA financial participation for some or all of the items listed above.

We appreciate you and your staff's continued support and guidance to the EBP Team over these past eight months and look forward to CTRMA's continued partnership in developing multimodal transportation options in Central Texas.

If I can provide additional information or if you have any questions, please let me know.

Thanks for the consideration of these items.

Sincerely

David Marsh General Manager

Attachments

cc: Randy Clarke, Capital Metro

























