

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

RESOLUTION NO. 08-42

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code §26.01, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, the CTRMA identified the 183-A Turnpike Project (the "Project") as its initial project in a petition filed under the RMA rules and has subsequently undertaken to cause the Project to be constructed and completed; and

WHEREAS, an integral part of the Project is the provision of multi-modal transportation opportunities, including trails and paths for use by pedestrians and bicyclists along portions of the Project; and

WHEREAS, the CTRMA has developed plans for a shared use path along portions of the Project with the first phase beginning on the north side of Brushy Creek and extending northward to FM 1431 (the "Shared Use Path"); and

WHEREAS, the Shared Use Path includes a pedestrian and bicycle crossing of the railroad operated by Capital Metropolitan Transportation Authority ("Cap Metro") south of Brushy Creek Road (the "RR Crossing") and the location and construction of the RR Crossing requires that a license agreement by and between Cap Metro and the CTRMA be created and executed; and

WHEREAS, Cap Metro representatives and the CTRMA staff have developed and negotiated a proposed license agreement in substantially the form and upon the terms and conditions set forth in Attachment "A" attached hereto and incorporated herein for all purposes (the "License Agreement"); and

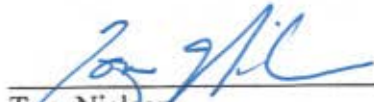
WHEREAS, the License Agreement substantially sets forth the terms and conditions by which the CTRMA will locate, construct, and maintain the RR Crossing over and across the Cap Metro rail line and the CTRMA staff and the Executive Director recommend that the Board authorize the execution of the License Agreement.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves of the form, terms and provisions of the License Agreement as attached hereto in Attachment "A" for the purposes set forth therein; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to execute such License Agreement in its final form on behalf of the CTRMA, with such License Agreement becoming effective upon its authorization and execution by Cap Metro.


Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of July 2008.

Submitted and reviewed by:



Tom Nielson
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Robert E. Tesch
Chairman, Board of Directors
Resolution Number 08-42
Date Passed 07/30/08

ATTACHMENT "A"
FORM OF LICENSE AGREEMENT WITH
CAPITAL METRO FOR
CTRMA SHARED USE PATH

LICENSE AGREEMENT

This License Agreement (the "Agreement") is made by and between **Capital Metropolitan Transportation Authority**, referred to herein as **Capital Metro** ("Owner"), a political subdivision of the State of Texas and the **Central Texas Regional Mobility Authority** ("Licensee"), a political subdivision of the State of Texas, in light of the following recitals, to wit:

Recitals:

A. In 1986, the City of Austin in conjunction with Owner and The Federal Transit Administration (the "FTA") pursuant to a federal grant, Project No. TX-05-0130 (the "Grant") purchased from the Southern Pacific Transportation Company approximately 162 miles of railroad right-of-way including the track, track support structures, and the real property in the counties of Bastrop, Burnet, Lee, Llano, Travis, and Williamson, Texas, generally situated at or near AUNW milepost 0.0 near Giddings, Texas and running continuously to a point at or near AUNW milepost 154.07 near Llano, Texas, including the Austin Junction which commences at AUNW milepost 56.5 and runs to downtown Austin, the Marble Falls Branch which commences at AUNW milepost 124.7 near Fairland, Texas and runs to Marble Falls, Texas, the Burnet Spur which runs from AUNW milepost 114.9 to downtown Burnet, Texas, and the Scobee Spur which runs from AUNW milepost 127.67 to the end of the track in Llano, Texas (collectively the "Giddings-Llano Line").

B. The Grant requires, among other things, that the Giddings-Llano Line be used for the provision of mass transportation service.

C. On or about May 20, 1998, Owner purchased and acquired from the City of Austin all of the City of Austin's right, title and interest in and to the Giddings-Llano Line.

D. Owner contracts with an independent Operations and Maintenance (O&M) Contractor for the operation of commuter rail service and rail freight service on and over the Giddings-Llano Line.

E. Licensee has submitted an application with Owner and paid the \$550 application fee prior to execution of this Agreement.

F. Licensee has requested the right to construct, maintain and a at-grade public shared use bike path with the centerline of the path located at CMTA MP 80.316, E.S. 1261+78 ("Crossing") across Owner's railroad right of way on the Giddings-Llano Line located in the City of Cedar Park, Williamson County, Texas which will cross the Owner's Property.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, and the mutual covenants and promises in this Agreement, the parties agree as follows:

1. Owner, subject to the conditions, limitations, and reservations hereinafter set forth, hereby grants to Licensee the right to use that portion of the Giddings-Llano Line in Williamson County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Licensed Property") for the sole purpose of constructing, maintaining and operating the Crossing referenced above (Section F).
2. Licensee shall, upon the Effective Date hereof, pay to Owner a one-time license fee ("License Fee") in the amount of **five hundred and no /100 dollars (\$500.00)**.
3. Licensee, shall construct, and maintain the Crossing over and across the Licensed Property. The Crossing shall consist of a sixteen (16) foot wide crossing located at CMTA MP 80.316, E.S. 1261+78, approximately one thousand six hundred sixty-nine (1,669) feet west of CMTA MP 80.0, and three thousand six hundred eleven (3,611) feet east of the centerline of Brushy Creek Road located at CMTA MP 81.00, E.S. 1297+87 where it crosses the railroad tracks at Licensee's sole expense in a manner and at such times, which are satisfactory to Owner.
4. Licensee, shall design, install, construct and maintain the Crossing across Owner's railroad right-of-way with centerline at CMTA MP 80.316, E.S. 1261+78 and such design shall meet standards set by the American Railway Engineering and Maintenance of Way Association (AREMA) and be approved by Owner prior to the commencement of construction. Licensee agrees that the Crossing will have a maximum width of sixteen (16) feet and the Crossing surface shall include the installation of new 7'x9"x10' crossties with pandrol plates and concrete crossing panels, per Owner's specification, the entire width of the Crossing plus a minimum of five (5) feet either side of the Crossing as depicted and described in the Project Layout and attached as **Exhibit "B"**.
5. Licensee shall install at the Crossing signalization (Type F (AAR 1489)) that includes, but is not limited to, a 6'x6' house, controller, gates, bells and LED lights along with a six (6) foot black coated chain link fence. The fence shall run parallel with the railroad track for a minimum distance of one hundred (100) feet on the north and south side of the crossing and begins adjacent to the signalization per Owner's specifications.
6. Licensee, shall also ensure that the existing public at-grade crossing located at CMTA MP 80.30, E.S. 1261+05 installed by the City of Cedar Park for access to the Cedar Park Water Treatment Plant as depicted in License Agreement #M9010001 is removed and Licensee agrees to restore the Licensed Property to the same state and condition in which it existed prior installation of the of the at-grade crossing to the

Cedar Park Water Treatment Plant. Licensee also agrees that such removal shall not interfere with daily rail operations.

7. Licensee shall not cause to be located any new ground facilities or subterranean facilities within the Licensed Property without the prior consent of Owner. No equipment, vehicles, material or supplies will be stored on the Licensed Property or on any portion of the Giddings-Llano Line overnight or on weekends.

8. Licensee, at its sole expense, shall survey all proposed route(s) for the inspection of a representative of Owner prior to commencement of construction on the Owner's property. The survey stakes shall delineate the center-line and outside limits of the at-grade public shared use bike path. Licensee shall coordinate with Owner to arrange for a representative of Owner to be present at the site prior to location and installation of any equipment or facilities on Owner's property. Licensee, will provide approved final survey and staking in electronic file format to the Owner.

9. Licensee, shall furnish, install, and maintain at its sole expense, in a manner satisfactory to Owner, such signs as are recommended and approved by the Owner to adequately mark the location of Licensee's use of Owner's property.

10. Licensee or its designee shall not perform any installation, construction, reconstruction, maintenance or other work on the Giddings-Llano Line or the property of Owner, without providing Owner's Dispatch Control Center a minimum seven (7) day notice at 512/873-7087 and being trained in Roadway Worker Safety by Owner's O & M Contractor. Licensee can contact O&M Contractor at 512/338-2748 for training schedule. If an emergency situation arises, Licensee or its designee shall immediately notify Owner's Railroad Right-of-Way Department by telephone, and then proceed to take only those actions necessary to return Owner's property to a safe condition, unless otherwise directed by Owner.

11. In the event Licensee fails to install, construct, and maintain the Crossing, including all required signage in a good and safe condition satisfactory to Owner and such failure continues for a period of thirty (30) days following Licensee's receipt of written notice from Owner, Owner reserves the right to perform the required work at Licensee's expense.

12. Licensee shall obtain and maintain any additional necessary governmental authorization for the location, construction, maintenance, and operation of the Crossing on the Licensed Property.

13. To the extent allowed by law, Licensee hereby agrees to release Owner, and further agrees to indemnify, defend and hold harmless, Owner from and against all liability, cost and expense (including, but not limited to, attorneys' fees, court costs, other costs of litigation and judgments) for loss of or damage to any property and for injuries to or death of any persons (including the property and employees of the parties hereto) caused wholly or partially by Licensee's willful misconduct or negligent exercise

of the rights granted to Licensee in this Agreement, except to the extent that any such liability, cost, or expense arises from the negligence or the willful misconduct of Owner. Owner hereby agrees to release Licensee, and further agrees to indemnify, defend and hold harmless, Licensee from and against all liability, cost and expense (including, but not limited to, attorneys' fees, court costs, other costs of litigation and judgments) for loss of or damage to any property and for injuries to or death of any persons (including the property and employees of the parties hereto) caused wholly or partially by the negligence or the willful misconduct of Owner affecting, directly or indirectly, the work by Licensee and its designees authorized hereunder.

14. Licensee has provided Owner with certified copies of insurance coverage in the form and amounts required by Owner as set forth in Exhibit "C", attached hereto and made a part hereof. Licensee shall keep such insurance coverage in full force and effect, at all time during the effective period of this Agreement. Such insurance shall include Owner as additional insured.

15. Licensee shall pay in full all persons who perform labor related to the construction of the Crossing and its continue operation. Licensee will not allow any mechanics' or materialmen's liens to be filed or enforced against the Giddings-Llano Line or the property of Owner for work done or materials furnished at Licensee's instance or request. If any such liens are filed thereon, Licensee agrees to immediately remove the same at Licensee's own cost and expense and to pay any judgment which may be entered thereon or thereunder, without regard to the legal enforceability of such liens. Should Licensee fail, neglect or refuse to do so, Owner shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Licensee shall be liable to the same for all costs, damages and reasonable attorneys fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment obtained therefor.

16. a. Licensee shall, at its expense comply with all applicable laws, regulations, rules, ordinances, and orders regardless of when they become effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request to Owner.

b. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the Licensed Property as a result of Licensee's use, presence, operations or exercise of the rights granted hereunder, Licensee shall, at its expense, be obligated to clean all property affected thereby, whether owned or controlled by Owner or any third persons to the satisfaction of Owner and any other governmental body having jurisdiction in the matter. Owner may, at its option, clean the Licensed Property; if either of the aforementioned elects to do so, Licensee shall pay said entity the cost of such cleanup promptly upon receipt of a bill therefor.

c. Licensee hereby agrees to release Owner, and further agrees to investigate, indemnify, defend and hold harmless Owner from and against all liability, cost and expense (including, without limitation, any fines, penalties, judgments, court costs, other litigation costs, and attorneys' fees) incurred by Owner as a result of Licensee's breach of this Section 16, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this Agreement is in effect or thereafter, except to the extent such liability, cost or expense is the negligence or willful misconduct of Owner or some other third party unrelated to Licensee.

17. This Agreement is subject and subordinate to:

- a. The interest of the federal government and the FTA pursuant to the Grant;
- b. Existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title affecting the Giddings-Llano Line.

18. Owner, and its agents, successors, and assigns, consistent with the rights herein granted, reserve the right to use the Giddings-Llano Line for any and all purposes not inconsistent with the rights granted to Licensee in this Agreement.

19. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations 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 the 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. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon three (3) days of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

20. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. This Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

21. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. This Agreement embodies the entire agreement and understanding between the parties relating to the transaction contemplated hereby and may not be amended,

waived or discharged except by an instrument in writing executed by Owner and Licensee.

23. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue shall be in Travis County.

24. The rights and privileges herein given are personal to the Licensee. This Agreement shall not be assignable by Licensee, in whole or in part, without the prior written consent of Owner.

25. If all or any portion of the Licensed Property, including but not limited to the air ways over and across the Licensed Property is condemned by any authority with condemnation powers, the proceeds of such condemnation shall be the property of Owner.

26. This Agreement shall terminate upon the occurrence of any of the following events:

a. The location, installation, construction, maintenance, and operation of the Crossings is not commenced within one (1) year from the Effective Date of this Agreement; or

b. The Crossings shall be abandoned by Licensee for more than one hundred eighty (180) days; or;

c. Licensee shall fail to perform or comply with any of the terms and provisions of this Agreement and such failure shall continue for a period of thirty (30) days following Licensee's receipt of written notice from Owner; or

d. The liability insurance coverage required by this Agreement shall be cancelled, fail or lapse and Licensee shall fail to reinstate or replace it within thirty (30) days of such cancellation, failure or lapse; or

e. Upon thirty (30) days' prior written notice from Licensee to Owner; or

f. Upon One hundred eighty (180) days' prior written notice from Owner to Licensee.

27. Upon termination of the rights hereby granted, Licensee agrees, upon receipt of a written request from Owner, to remove the Crossings, to restore the Licensed Property to the same state and condition in which it existed prior to location and construction of the Crossings, and to bear all expense thereof. Should Licensee in such event fail, neglect or refuse to so remove the Crossings and restore the Licensed Property, such removal and restoration may be performed by Owner at the expense of Licensee, and Licensee agrees to make full restitution and reimbursement to Owner for such sum immediately upon demand.

28. In the event Owner shall successfully bring suit to compel performance of, or to recover for breach of, any covenant or condition hereunder, Licensee shall pay to Owner reasonable attorneys' fees in addition to the amount of the judgment and costs.

29. As used in this Agreement, the "Effective Date" of this Agreement shall be the date this Agreement has been executed by Owner.

30. Time is of the essence in this Agreement. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays, and Texas legal banking holiday, then such obligation shall be performed on the next following regular business day.

31. Each of the signatories to this Agreement represents and warrants that he is duly authorized to sign this in the capacity indicated.

Executed on various dates to be effective as of the Effective Date:

CAPITAL METROPOLITAN

CAPITAL METRO:

TRANSPORTATION AUTHORITY

Date: _____

By: _____

Fred M. Gilliam
President/CEO

Approved as to form: _____

LICENSEE:

**CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY**

Date: _____

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2008, by Fred M. Gilliam, President/CEO of CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY, a political subdivision of the State of Texas, on behalf of said public body.

Notary Public, State of Texas
Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2008 by _____ of CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY, a political subdivision of the State of Texas, on behalf of said public body.

Notary Public, State of Texas
Commission Expires: _____

Exhibit "A"

A strip of land being approximately sixteen (16) foot wide located at CMTA MP 80.316, E.S. 1261+78, approximately one thousand six hundred sixty-nine (1,669) feet west of CMTA MP 80.0, and three thousand six hundred eleven (3,611) feet east of the centerline of Brushy Creek Road located at CMTA MP 81.00, E.S. 1297+87 where it crosses the Giddings to Llano Rail Line as shown on Licensee's as built, plan and profile.

The width of the Giddings-Llano right-of-way at this location is one hundred (100) feet, being fifty (50) feet north of the centerline of tracks and fifty (50) feet south of the centerline of tracks more fully depicted in "Exhibit A1".

Exhibit "A1"

(Validation Map)