

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

**RESOLUTION NO. 06-56**

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 North East Regional Mobility Authority ("NET RMA") was created pursuant to the request of Gregg and Smith 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, 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, § 370.033 of the RMA Act provides that regional mobility authorities may enter into interlocal agreements with other governmental entities for project development related services; and

WHEREAS, the CTRMA has previously hired employees and entered into contracts with several consultants for the provision of services related to transportation project development, financing operations, and maintenance; and

WHEREAS, the NET RMA is in need of project management and other services related to the proposed Loop 49 Toll Project located in Smith County, Texas, and

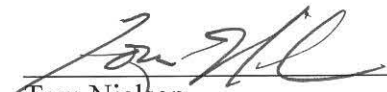
WHEREAS, Board of Directors of the CTRMA desires to assist the NET RMA by entering into the interlocal agreement, attached hereto as Attachment "A", with the NET RMA to allow CTRMA employees and consultants to provide needed project development and related services to the NET RMA.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves the entry into the interlocal agreement, attached hereto as Attachment "A" allowing CTRMA employees and consultants to provide needed project development and related services to the NET RMA under the terms and provisions for compensation reflected therein; and


BE IT FURTHER RESOLVED, that the Executive Director is authorized to execute such interlocal agreement on behalf of the CTRMA.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 27th day of September, 2006.

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 06-56  
Date Passed 09/27/06

## INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** is made and entered into effective the 1<sup>st</sup> day of June, 2006 by and between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (the "CTRMA") and the NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY ("NET RMA"), political subdivisions of the State of Texas (collectively, the "Parties").

### WITNESSETH:

**WHEREAS**, the CTRMA is a regional mobility authority created pursuant to the request of Travis and Williamson Counties and operating pursuant to Chapter 370 of the Texas Transportation Code (the "RMA Act") and 43 TEX. ADMIN. CODE § 26.01 *et seq.* (the "RMA Rules"); and

**WHEREAS**, the NET RMA is a regional mobility authority created pursuant to the request of Gregg and Smith Counties and operating pursuant to Chapter 370 of the Texas Transportation Code (the "RMA Act") and 43 TEX. ADMIN. CODE § 26.01 *et seq.* (the "RMA Rules"); 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**, §370.033 of the RMA Act provides that regional mobility authorities may enter into interlocal agreements with other governmental entities for project development related services; and

**WHEREAS**, the CTRMA has previously hired employees and entered into contracts with several consultants for the provision of services related to transportation project development, financing operations and maintenance; and

**WHEREAS**, the NET RMA is in need of project management and other services related to the proposed Loop 49 Toll Project located in Smith County, Texas and potentially to other NET RMA projects; and

**WHEREAS**, the Parties have agreed that it would be to their mutual benefit for certain CTRMA employees and consultants to be available to provide needed project development and related services to the NET RMA.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the undersigned Parties agree as follows:

## I. FINDINGS

**Recitals.** The recitals set forth above are incorporated herein for all purposes and are found by the Parties to be true and correct. It is further found and determined that the Parties have authorized and approved this Agreement by resolution or order adopted by their respective bodies, and that this Agreement will be in full force and effect when approved by each Party.

## II. ACTIONS

**1. Provision of Services.** Subject to the terms of this Agreement the NET RMA is hereby authorized to utilize the project management and related services of CTRMA consultant Everett Owen, P.E (the "Project Manager"). The NET RMA shall also have the opportunity to utilize the services of the CTRMA Director of Operations, Chief Financial Officer, Communications Director, and other CTRMA staff and consultants as appropriate and agreed to by the Parties.

**2. Hours.** Unless otherwise agreed to by the Parties, the number of hours worked by Project Manager on behalf of the NET RMA under this Agreement shall not exceed forty (40) hours per month. The number of hours, if any, to be worked by any other CTRMA employees or consultants under this Agreement shall be as agreed to by the Parties on an "as needed" and "as available" basis.

**3. Compensation.** Subject to paragraph 4 below, the CTRMA shall invoice the NET RMA on a monthly basis for services rendered by Project Manager or other CTRMA employees or consultants. The rate charged for Project Manager's services under this Agreement shall be \$100 per hour, and in no event shall the aggregate amount paid by the NET RMA for Project Manager's services exceed \$60,000 annually. The rate charged for services provided by any other CTRMA employees or consultants shall be as set forth in Appendix "A" or as otherwise agreed to by the Parties. Actual expenses for travel and lodging incurred in the performance of work under this Agreement shall be reimbursable by NET RMA to CTRMA, subject to paragraph 4 below.

**4. Payment.** Payments due to the CTRMA under this Agreement shall be made by the NET RMA to:

Central Texas Regional Mobility Authority  
301 Congress Avenue, Suite 650  
Austin, TX 78701  
Attn: Chief Financial Officer

All amounts invoiced to the NET RMA must be reimbursable by TxDOT pursuant to the Financial Assistance Agreement between the NET RMA and TxDOT related to the Loop 49 Toll Project (a copy of which is attached hereto as Appendix "B"). The NET RMA shall submit a payment request to TxDOT within fifteen (15) days of receipt of a conforming invoice from the CTRMA. Payment shall be due to the CTRMA from the NET RMA within thirty (30) days of the NET RMA's receipt of payment from TxDOT. CTRMA acknowledges that, unless agreed

otherwise by the Parties for specific work, NET RMA shall have no liability for amounts invoiced by CTRMA which are not to be reimbursable by TxDOT under the Financial Assistance Agreement.

### III. GENERAL AND MISCELLANEOUS

1. **Term and Termination.** This Agreement shall be effective as of the date first written above and shall continue in force and effect until June 30, 2007. The term of this Agreement may be terminated upon thirty (30) days written notice by either Party or be extended by written agreement of the Parties.

2. **Prior Written Agreements.** This Agreement is without regard to any and all prior written contracts or agreements between the Parties regarding any other subject matter and does not modify, amend, ratify, confirm or renew any such other prior contract or agreement between the Parties.

3. **Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

4. **Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claim on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

5. **Amendments and Modifications.** This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

6. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

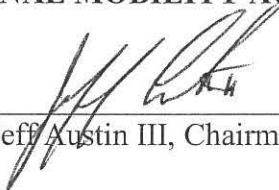
7. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

**CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY**

By:   
Robert E. Tesch, Chairman

**NORTH EAST TEXAS  
REGIONAL MOBILITY AUTHORITY**

By:   
Jeff Austin III, Chairman

**APPENDIX "A"**  
**RATE SCHEDULE**

<b>Position</b>	<b>Hourly Rate</b>
Chief Financial Officer	91.14
Community Development Director	67.46
Director of Operations	76.05
Director of Communications	59.52
Communications Specialist	26.45
General Counsel	85.97

**APPENDIX "B"**

**FINANCIAL ASSISTANCE AGREEMENT BETWEEN NET RMA AND TXDOT FOR  
THE LOOP 49 TOLL PROJECT**



## FINANCIAL ASSISTANCE AGREEMENT

This Agreement is made by and between the Texas Department of Transportation, an agency of the State of Texas ("TxDOT"), and the North East Texas Regional Mobility Authority, a political subdivision ("NET RMA"), for the purpose of providing financial assistance in connection with the further study and development of the proposed Loop 49 Project.

### RECITALS

The parties acknowledge the following:

A. The NET RMA is a regional mobility authority formed pursuant to Chapter 370 of the Transportation Code and 43 Tex. Admin. Code § 26.01 *et seq.* (the "RMA Rules").

B. The NET RMA has identified the continuation and completion of the proposed Loop 49 Project from I-20 to SH 110 in Smith County as its first project.

C. TxDOT, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Transportation Code, is authorized to participate, through the expenditure of money from any source, in the acquisition, construction, maintenance or operation of a toll facility.

D. TxDOT has adopted rules at 43 Tex. Admin. Code § 27.50 *et seq.* (the "Toll Equity Rules") setting forth the policies and procedures by which it will participate in the financing of a toll facility.

E. On or about October 6, 2005, the NET RMA submitted a request, pursuant to the Toll Equity Rules, for financial assistance to fund certain development costs of the Loop 49 Project. The four segments included in the request involve the proposed expansion of Segments 1 and 2 from SH 155 to FM 756 to a four-lane facility, and the development of Segment 3 from I-20 to SH 155 and Segment 5 from FM 756 to SH 110.

F. On November 17, 2005, and January 26, 2006, the Texas Transportation Commission ("Commission"), pursuant to its constitutional and statutory authority and the Toll Equity Rules, gave preliminary and final approval to the award by TxDOT of financial assistance in an amount not to exceed \$12.25 million, in the form of a loan, for the further study and development of four segments of the Loop 49 Project in Smith County, including the costs of certain design and engineering services necessary for project development, traffic and revenue studies as needed, and legal and financial advisory services. In Minute Order No. 110388, the Commission authorized the Executive Director to enter into a financial assistance agreement with the NET RMA.

G. On February 7, 2006, the NET RMA Board of Directors accepted the award of financial assistance and authorized the Chairman to enter into a financial assistance agreement with TxDOT.

## AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

1. TxDOT will provide financial assistance to the NET RMA in the amount of up to \$12.25 million to be used for further study and development of four segments of the Loop 49 Project in Smith County, including the costs of design and engineering services necessary for project development, traffic and revenue studies as needed, other permissible project related costs, and legal and financial advisory services. Costs payable through the financial assistance are limited to the salaries and other direct costs described in Attachment A to this Agreement that are incurred during the course of project related work performed by NET RMA staff and legal, financial, engineering, and other consultants, as well as incidental administrative and other expenses of the indirect overhead of the Authority, provided that (a) only those direct and indirect costs determined to be reasonable and allowable under OMB Circular A-87 may be reimbursed, (b) the amount of indirect costs to be reimbursed in a month will be determined by multiplying the percentage of direct costs on the applicable project to total costs in that month by the amount of indirect costs, and (c) in the event the NET RMA subsequently receives additional financial assistance from TxDOT related to other projects the aggregate of incidental expenses and indirect overhead allocations may not exceed 100% of those expenses.

2. Funds to be made available pursuant to this Agreement shall be disbursed within thirty (30) days of receipt and formal acceptance by TxDOT of a request from the NET RMA, which request shall comply with the invoice requirements prescribed in Attachment A to this Agreement, and which shall also include the following:

- a. the amount requested;
- b. a description of the use of the funds requested; and
- c. copies of proposals, invoices, fee statements, or other documentation showing the intended use of the funds requested.

3. The NET RMA may, but is not obligated to, request pre-approval of costs to be incurred in connection with the project development work for the Loop 49 Project, and which are to be paid with funds disbursed under this Agreement, provided the amount of such costs, as determined by TxDOT, is reasonable and consistent with prior invoiced amounts and industry standards. Except for expenditures which are subject to any such pre-approval, TxDOT shall have the right to deny all or part of a request for funds proposed to be used for purposes not authorized by this Agreement or due to a lack of adequate documentation. In either event the NET RMA will have the right to submit additional information to clarify the use of the funds requested or to provide any missing documentation.

4. To the extent funds disbursed hereunder are utilized to procure tangible work product consistent with the authorized purposes under this Agreement, TxDOT shall have the right to review such work product as a condition to making a requested disbursement.

5. Amounts disbursed to, or on behalf of, the NET RMA pursuant to this Agreement must be repaid to TxDOT. The obligation to begin making repayments shall accrue upon the occurrence of any of the following:

- a. the NET RMA can issue bonds secured by revenue of the Loop 49 Project that when combined with other funding sources is sufficient to complete the project and repay this financial assistance provided by TxDOT under this agreement, in which case the total amount of funds advanced shall be repaid from bond proceeds; or
- b. the Loop 49 Project is opened for normal and continuous operations and use by the traveling public, provided that the NET RMA shall not be obligated to pay to TxDOT more than ten percent (10%) of the project revenues it receives in any single calendar year, such obligation to continue until the full amount disbursed by TxDOT under this Agreement is repaid.

6. In the event the Loop 49 Project is not developed by the NET RMA, all work product associated with the Loop 49 Project and procured with funds granted under this Agreement shall, at TxDOT's request, be transferred to the department, along with all right, title and interest in and to such work product.

7. Any default by the NET RMA in making repayments of financial assistance provided under this Agreement which remains uncured after sixty (60) days prior written notice provided by TxDOT shall result in an obligation on the part of the NET RMA to transfer the Loop 49 Project, along with all right, title and interest in and to any and all work product associated with the Loop 49 Project. Any transfer of the facility would be subject to the rights of holders of any outstanding senior debt.

8. The NET RMA will comply with applicable state and federal law in the performance of its work under the agreement and will comply with any other applicable provision of the Toll Equity Rules relating to the performance of work. The NET RMA shall not begin the development of a schematic or the performance of any other design work for the Loop 49 Project until a project development agreement is executed by TxDOT and the NET RMA.

9. The NET RMA will maintain its books and records relating to the Loop 49 Project and the financial assistance provided under the agreement in accordance with the requirements of 43 TAC § 27.55(b)(2), and will comply with the audit requirements and other requirements relating to project records in 43 TAC § 27.55(b).

10. Nothing herein shall be construed as compliance with any applicable requirements relating to transfer of the Loop 49 Project, or as an approval of the Loop 49 Project or the transfer of the project.

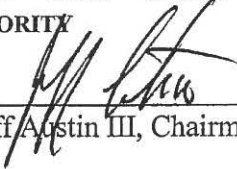
11. Nothing herein shall excuse compliance, if applicable, by the NET RMA with any or all environmental permits, issues and commitments necessary for development and ultimate operation of the Loop 49 Project.

This Agreement shall be effective as of the 7<sup>th</sup> day of March, 2006.

**TEXAS DEPARTMENT OF TRANSPORTATION**

By:   
Michael Behrens, Executive Director

**NORTH EAST TEXAS REGIONAL MOBILITY  
AUTHORITY**

By:   
Jeff Austin III, Chairman

## Attachment A to Financial Assistance Agreement

### Invoice Reimbursement Checklist

**Direct Labor/ Timesheets:** The invoice must clearly identify each employee name, title, hours worked, date of performance, task or project description, rate per hour and/or cost, and office/company location.

**Transportation Costs and Reimbursable Limits:** Efforts must be made to secure a *reasonable* and/or lowest rate available in the marketplace.

**Airline Costs:** TxDOT will only reimburse for airline costs at the Economy or Coach Class rate. Extra insurance and luggage costs are unallowable. Airline ticket "reissue fee" is reimbursable only if the change was at TxDOT's request or change in meeting because of TxDOT.

**Personal Automobile Mileage:** Up to the state approved rate of **.445 cents** per mile or the current state rate applicable at the time cost is incurred. Expense report must clearly identify the departure/arrival time, To/From destinations and purpose of trip.

**Automobile Rentals:** Not to exceed **\$50.00 per day** plus applicable taxes. Extra optional insurance or rental company gasoline costs are unallowable. Weekly or Monthly rates should be used when applicable. Upgrades beyond economy-sized require an explanation. Use of automobile rental not related to the project is unallowable. Legible itemized receipts are required.

**Hotel Rates:** Weekly and Monthly rates are encouraged and expected when applicable. Reimbursable costs shall not exceed **\$85.00 per day** plus applicable city/state/county taxes or current state rate applicable at the time cost is incurred.

**Meals (Food Costs):** Meal receipts are not required. Actual costs are allowable up to a maximum Per Diem allowance of **\$36.00 per day** or current state rate applicable at the time cost is incurred. Meals are only reimbursable with overnight lodging away from headquarters. *Tips and alcohol are not reimbursable. Per meal maximums for partial day travel are as follows: Breakfast \$8.00, Lunch \$10.00 and Dinner \$18.00 and are adjusted proportionately to a change in the current state rate.*

**Other - Taxi, Bus, Limousine, Subway, etc.:** Only reasonable and prudent costs (with explanations) are reimbursable. Legible itemized receipts are required. *Tips are not reimbursable.*

**Entertainment Costs:** Entertainment costs are not reimbursable such as: 1. Movie costs for "Pay for View" or Cable service. 2. Alcohol costs. 3. Monetary Tips (tipping) for any and all services related to all forms of travel (and/or entertainment).

**Communication Costs:** Long Distance telephone calls need to be identified and strictly related to work performed under this Agreement in order to be reimbursable by TxDOT. A log is preferred showing the date, person's name called, and explanation. Cell phone monthly charges are reimbursable if usage is strictly related to work performed under this Agreement. Legible itemized cell phone records are required.

**Receipts:** Legible itemized receipts are required for the following: 1. Hotel (lodging) costs. 2. Airfare travel costs. 3. Parking costs. 4. Automobile or Equipment Rental costs. 5. Taxi, Limousine, Bus, Subway, or other travel costs. 6. Reproduction. 7. Shipping and Handling. 8. Local Postage/Deliveries (courier services). *Tips and alcohol are not reimbursable.*