

**Amendment to Interlocal Agreements for Regional Mobility and  
Transportation Projects Between Capital Metropolitan Transportation  
Authority and City of Austin**

This Amendment to Interlocal Agreements for Regional Mobility and Transportation Projects Between Capital Metropolitan Transportation Authority and City of Austin (“Agreement”) is made by and between Capital Metropolitan Transportation Authority, a transportation authority organized under Chapter 451 of the Texas Transportation Code (“Capital Metro”), and the City of Austin, a Texas home-rule municipal corporation (the “City”) (collectively “the Parties”).

**1. Recitals**

- A. Capital Metro and the City are parties to Interlocal Agreements for Regional Mobility and Transportation Projects dated June 22, 2001 (the “2001 Agreement”) and May 23, 2003 (the “2003 Agreement”).
- B. Payments to the City by Capital Metro under Paragraph 1.4 of the 2001 Agreement and Paragraph I(C) of the 2003 Agreement in any year are to be made from current year’s revenue available to Capital Metro.
- C. Capital Metro and the City desire to define when current revenue is available for payments by Capital Metro pursuant to Paragraph 1.4 of the 2001 Agreement and Paragraph I(C) of the 2003 Agreement.
- D. Capital Metro and the City by this Agreement will terminate Capital Metro’s obligations under Paragraph 1.7 of the 2001 Agreement and Paragraph I(E) of the 2003 Agreement.

**2. Agreement**

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Capital Metro and the City agree as follows:

- A. Paragraph 1.4 of the 2001 Agreement and Paragraph I(C) of the 2003 Agreement are replaced in their entirety by the following provisions:
  - 1. In consideration of the City carrying out the approved transportation projects identified in Exhibit A of the 2001 Agreement and Exhibit A-2 the 2003 Agreement, as modified over time to add projects approved by Capital Metro, including modifications authorized by this Agreement (“Transportation Projects”), Capital Metro shall pay to the City, from available current years revenue in the manner set forth below, the remaining balance of \$51,129,130, as follows:
    - i. Capital Metro shall pay to the City, annually, commencing November 1, 2010, and on or before November 1 of each subsequent year, 35 % of the excess, if any, of the one cent sales

tax, which Capital Metro imposes on sales within the Capital Metro service area and the State Comptroller's Office collects on behalf of, and pays over to Capital Metro in a Fiscal Year (as defined in Appendix A hereto), over the "Threshold Amount" for such sales tax specified in **Appendix A**, incorporated herein, for that Fiscal Year ("Annual Payment");

- ii. The Annual Payments will be made by reimbursing the City for expenses incurred on Transportation Projects invoiced by the City with invoices that comply with **Appendix B**, incorporated herein, provided, however, such reimbursement in any year shall be no greater than the payment amount for that year calculated as provided in (i) above;
- iii. When total payments to the City, pursuant to this Agreement, from the sales tax imposed by Capital Metro on sales within the Capital Metro service area reach the sum of \$51,129,130, the obligations of Capital Metro under Paragraph 2(A)(1) of this Agreement (and, thus, Paragraph 1.4 of the 2001 Agreement and Paragraph I(C) of the 2003 Agreement) are deemed satisfied and no further payments are owed; and
- iv. Should the total monthly invoices submitted by the City in compliance with Appendix B in any Fiscal Year be less than the Annual Payment amount as calculated under (i) above, then the unpaid balance will be set aside in a separate account that can only be used to make payments to the City under this Agreement ("Reserve Account"). Funds set aside in the Reserve Account shall be used to supplement the Annual Payment as calculated under (i) above in any Fiscal Year when the monthly City invoices exceed the amount of the Annual Payment as calculated under (i) above.

B. The City may modify the transportation project list in Exhibit A of the 2001 Agreement and Exhibit A-2 of the 2003 Agreement, as they have been modified over time. Such modifications may include the addition of new transportation projects or the removal of identified transportation projects. Such modifications will not affect amounts owed by Capital Metro under Paragraph 2(A)(1) of this Agreement. The City will provide written notice to Capital Metro 45 days prior to any proposed modification to the transportation project list under this paragraph. Capital Metro will certify the modification of the project list within 15 days after receipt of such notice for all modifications meeting one or more of the following criteria, and such certification shall not be unreasonably withheld:

- 1. enhances regional mobility;

2. supports public transit;
  3. provides leverage for federal or private funds;
  4. adds to an existing program; and,
  5. expedites a critical mobility project.
- C. Capital Metro agrees that Texas Local Government Code §271.152 applies to this Agreement. Capital Metro agrees that it waives sovereign immunity to suit or liability for the purpose of adjudicating a claim to construe, enforce, or seek a remedy for breach of this Agreement to the extent such immunity is waived by Texas Local Government Code.
- D. Payments made by either of the Parties under this Agreement shall be made from current revenues available to the paying party.
- E. The City or Capital Metro may request at any time to revisit this Agreement to consider amending its terms.
- F. The parties confirm and agree that Capital Metro and the City have by agreement herein terminated all obligations of Capital Metro under Paragraph 1.7 of the 2001 Agreement and Paragraph I(E) of the 2003 Agreement.
- G. Except as provided in this Agreement, the 2001 Agreement and the 2003 Agreement shall remain unchanged.
- H. This Agreement will be effective upon due execution by all parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

**Capital Metropolitan Transportation Authority**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2010.

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**City of Austin**

By: \_\_\_\_\_ Dated: \_\_\_\_\_, 2010.

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Appendix A**

Capital Metro will make payments in accordance with this Agreement when actual sales tax collections received by Capital Metro in any Fiscal Year exceed the “Threshold Amount” for that Fiscal Year as set forth below. A Fiscal Year is the twelve months commencing October 1 of a calendar year and ending September 30 of the following calendar year. A Fiscal Year is designated by the calendar year in which the Fiscal Year ends.

Year	Threshold Amount of sales tax collected
FY 2010	\$134,100,000
FY 2011	\$138,500,000
FY 2012	\$143,100,000
FY 2013	\$147,800,000
FY 2014	\$152,700,000
FY 2015	\$157,700,000
FY 2016	\$162,900,000
FY 2017	\$168,300,000
FY 2018	\$173,900,000
FY 2019	\$179,600,000
FY 2020	\$185,500,000
FY 2021	\$191,600,000
FY 2022	\$197,900,000
FY 2023	\$204,400,000
FY 2024	\$211,100,000

## **Appendix B**

### **Interagency Project Management Protocol**

In this Appendix B to the Amendment to Interlocal Agreements for Regional Mobility and Transportation Projects Between Capital Metropolitan Transportation Authority and City of Austin ("Agreement"), the City of Austin ("City") and Capital Metropolitan Transportation Authority ("Capital Metro") establish procedures, standards, and guidelines relative to the programming, planning, design, construction and payment of projects jointly implemented by Capital Metro and the City of Austin under the Agreement and the 2001 and 2003 Agreements as amended by the Agreement.

All provisions of this Appendix B will be observed by Capital Metro and the City, as attested by the signatories to the Agreement.

#### **Indirect and Administrative Cost**

Project management and construction management costs for contracted projects shall be based upon direct labor expense for project management and construction inspection services, with a rate for indirect and fringe costs that is identical to the indirect rate charged to City projects during the same time period. The approved amount will be shown on each invoice.

#### **Billings and Payments**

##### **A. Frequency and Format of Invoices**

Monthly invoices will be prepared and submitted within thirty (30) working days after the end of the month. Invoices will contain charges by project. Invoices will also reflect project appropriations, encumbered amounts and remaining balances. Invoices will be mailed to:

CMTA  
ATTN: Accounts Payable  
P.O. Box 6308  
Austin, TX 78762

##### **B. Level of Detail Required in Invoices**

Each individual project and transaction level detail will be identified within monthly invoices. Monthly invoices will incorporate data downloaded from the City financial system.

### C. Supporting Documentation

Upon Capital Metro staff request, City staff will provide supporting documentation for transactions.

- 50% and 100% plan sets for projects for review of transit-related items; where applicable
- Contract award information for design architects/engineers and construction-contractors (after award by COA)
- Copies of pay applications from contractors with each invoice
- Copies of change orders issued
- Documentation identifying key staff time and/or miscellaneous expenses applied to a specific project, where applicable.
- Copies of contract close-out documents

### D. Payment Terms

Payment will only be made for work completed, no advance payments will be made. Payment of properly completed monthly invoices received by Capital Metro in the prior Fiscal Years, including invoices provided to Capital Metro prior to execution of this Agreement, are due on or before November 1 in accordance with the terms of Paragraph 2.A.1 of the Agreement. Where there is any disagreement regarding specific invoiced items, the portion of the invoice which is undisputed will be paid by Capital Metro on or before November 1 of the year it is due and written documentation regarding the disputed portion of the invoice will be forwarded to the City within 30 days of the date Capital Metro receives the invoice. The City has twenty (20) working days to respond with additional detailed documentation requested relative to the disputed portion of the invoice. City and Capital Metro staff will expedite resolution of any disputed portions of invoices within sixty (60) days of original receipt. Should a dispute regarding an invoice received in any Fiscal Year delay payment beyond the November 1 payment due date, then any payment amount is due within 30 days of resolution of the disputed portions.

### Qualitative Standards

All materials and workmanship used in the completion of projects, whether completed through contract or by City forces, will conform to the City's standards and specifications, and/or any other applicable standards and specifications recommended by the design engineer.

### Quarters Reporting, and Contract Completion

Upon request by Capital Metro or the City, joint staff meetings will occur quarterly where projects of concern will be discussed. Upon request by Capital Metro, annual progress reports will be made to Capital Metro management and

the Board of Directors regarding the status of on-going projects. Any such annual report will include a description of the scope of the project, issues, status, schedule and budget.

#### Communications

- A. All written correspondence from the City of Austin to Capital Metro that relates to the transportation projects identified in Exhibit A of the 2001 Agreement and Exhibit A-2 the 2003 Agreement, as modified over time to add projects, including modifications authorized by the Agreement (“Transportation Projects”), should be sent to the V.P. of Strategic Planning and Development.
- B. All written correspondence from Capital Metro to the City of Austin that relates to Transportation Projects should be sent to the Project Manager and copied to the Director of City's Public Works Department and the Finance Manager.