

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT
FOR OPERATIONS AND MAINTENANCE OF THE
COMBINED TRANSPORTATION, EMERGENCY
AND COMMUNICATIONS CENTER**

**STATE OF TEXAS §
COUNTY OF TRAVIS §**

This Amended and Restated Interlocal Agreement (the “Agreement”) is between the **State of Texas**, acting through its **Texas Department of Transportation**, the **City of Austin, County of Travis**, and the **Capital Metropolitan Transportation Authority**, (collectively the “Parties” or individually the “Party”) each acting through their respective duly authorized officers or employees.

1. History of CTECC

The Parties entered into an Interlocal Agreement that was effective on October 10, 2002 (“Original Agreement”), for the operation and maintenance of a regional Combined Transportation, Emergency and Communications Center (“CTECC”) and related emergency functions.

The Parties, consisting of regional public safety and public service agencies, formed a coalition with a common vision of improved public service through collaboration. This regional coalition developed a mission to deliver nationally recognized public safety and public service by working together in a spirit of cooperation, trust, dedication, honesty, commitment, and accountability. The regional coalition desires to maintain a role as leaders in the delivery of transportation and emergency services by ensuring that the CTECC and Systems are cost effective, sustainable, reliable, technologically innovative, and support the needs of the users and the community by entering into this Agreement.

This Agreement provides for the organizational structure and funding to support operation and maintenance of CTECC and the following associated programs, all or a portion of which are located in the Facility:

Austin-Travis County Emergency Operations Center,
Computer Aided Dispatch System,
City of Austin Fire and ATCEMS Records Management System,
City of Austin Police Records Management System,

9-1-1 System, and
Intelligent Transportation System/Transportation Management Systems.

To date, the Parties have developed the CTECC by providing a site and designing and constructing a Facility and Systems.

The Parties amend and restate the Original Agreement.

2. **Term of Agreement.** This Agreement is effective on the date the last Party executes it (the “Effective Date”). Subsequently, this Agreement automatically renews each October 1st for up to ten (10) years, unless earlier terminated as provided in Section 17. If not terminated earlier, this Agreement terminates on October 1, 2029.

3. **Definitions.**

Agency means a department or unit of one of the Parties that has ongoing daily operations at CTECC.

Budget means the applicable portion of the Operating Budget, or Capital Costs Budget, both as defined in **Section 10** of this Agreement.

Cap Metro means the Capital Metropolitan Transportation Authority.

COA means the City of Austin, which has several departments or divisions participating in this Agreement, including:

COA-AFD means the City of Austin Fire Department.

COA-APD means the City of Austin Police Department.

COA City Manager means the City of Austin City Manager, or designee.

COA-ATD means the City of Austin Transportation Department

COA-HSEM means the City of Austin Homeland Security and Emergency Management Department

COA Program Management and Administrative Services Costs means those COA expenses, not otherwise included as a Cost, that are associated with providing management and administrative services for the Program, which are reimbursed as if COA were a third-party vendor of those services (e.g., mail service, IT support).

Costs means:

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Capital Costs means all costs associated with any additions, repairs, replacement, or upgrades to the CTECC and the Systems it supports after their initial construction is completed.

Internal Program Costs means all costs each Party must annually budget to pay all expenses associated with each System it operates out of the Facility, including Internal Program Employee Costs, but excluding the Capital Costs and Operating Costs allocated under this Agreement.

Operating Costs means all costs incurred to occupy and use the Facility, including building system services, custodial services, grounds maintenance, and the normal, periodic maintenance, tuning, servicing, inspecting, parts replacement and repair, and other similar activities that are intended to keep the Facility and Systems functioning efficiently, maintain their useful life, and reduce the probability of failures and includes Commodities Costs, Contractual Costs, and System Costs, as further defined below.

Commodities Costs means all costs associated with outright purchase of goods and services, such as photographic supplies, developing and printing; educational materials; books; office supplies; computer supplies; computer software; small tools and minor equipment; and minor computer hardware.

Contractual Costs means all costs associated with setting up contracts to supply goods and services, such as rental of copy machines; pagers; utility costs; vehicle maintenance and fuel costs; vending machines; education and seminar fees; travel for training; mileage reimbursement; Facility insurance and content insurance for Shared Systems; building maintenance; security services; office equipment maintenance; computer hardware and software maintenance; telephone base costs; and postage, printing, and binding.

Systems Costs means all costs associated with regular wages, stability pay, insurance, FICA, Medicare, and retirement contributions for Shared Employees and related costs to operate or upgrade the Systems, hardware, and software licenses; to provide training, and support; costs associated with maintenance contracts.

CTECC means Combined Transportation, Emergency and Communications Center, a regional integrated and coordinated combined emergency communications and transportation management center, inclusive of the Facility, structures on and around the

Facility on the Site, as well as the Systems on and within the Facility. CTECC houses the Austin-Travis County Emergency Operations Center and supports the operation and maintenance of critical public safety and emergency communications systems for the Austin-Travis County area.

County means County of Travis, a corporate and political subdivision of the State of Texas.

Day means calendar day.

Employee includes the following:

Internal Program Employees means those employees employed directly by a Party to support one or more Systems at the Facility and does not include Shared Employees.

Shared Employees means those employees employed by COA to support one or more Systems at the Facility whose salaries are funded by contributions from the Parties through the allocation of Costs in the Budget.

Facility means the buildings, structures, and related Site improvements constructed at 5010 Old Manor Road, Austin Texas, 78723.

Exclusive Facilities means that portion of the Facility designated for use by only one of the Parties as mapped in **Exhibit C**.

Partially Shared Facilities means that portion of the Facility designated for use by more than one Party as mapped in **Exhibit C**.

Shared Facilities means that portion of the Facility designated for common and general use by any Party at any time as mapped in **Exhibit C**.

General Manager means the individual hired by COA who is responsible for the day to day operations of the Program.

Governing Board means the board described in **Section 6** of this Agreement.

Lease means the Lease Agreement dated August 14, 2001, a current copy of which is on file in the office of the General Manager.

Legal Requirements means any applicable statute, law, regulation, court order, ordinance, commissioners court order, Texas Transportation Commission Minute Order, or the articles of incorporation, bylaws, or resolutions of Cap Metro approved by Cap Metro's Board of Directors.

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Manager Committee means the committee described in **Section 8** of this Agreement.

Office means the Office of Program set up by the COA City Manager.

Operating Board means the board described in **Section 7** of this Agreement.

Operational Manager means the position in/of an Agency that is responsible for day to day operations of that Agency at CTECC; for example, the COA-AFD Battalion Chief over AFD Communications is an Operational Manager.

Program means the Combined Transportation, Emergency and Communications Center Program, which includes the Facility and all of the Shared Systems and Internal Program Systems housed and managed within the Facility.

Remaining Parties means those Parties who remain committed to this Agreement if one or more other Parties withdraw.

Site means that portion of the land at 5010 Old Manor Road, Austin, Texas 78723, developed for CTECC, which is owned by and under the direct control of the COA and designated for the operation of regional combined emergency communications and transportation management.

System in the singular means each System, and **Systems** in the plural means all Systems as listed below. Systems may be added, altered, superseded, or removed from this Agreement by amendment.

9-1-1 System means the system provided and managed by the Capital Area Emergency Communications District which includes the three-digit emergency telephone number that provides citizens a direct link to Police, Fire, or Emergency Medical Service personnel. Calls to 9-1-1 are automatically routed to the primary and secondary Public Safety Answering Points (PSAPs) and answered by 9-1-1 call-takers who may dispatch, transfer, or relay the information.

CAD means a regional computer aided dispatch system used by multiple governmental agencies in Travis County for sharing data that interfaces with 9-1-1 call taking systems, Travis County Sheriff's Records Management System, City of Austin Public Safety Records Management Systems, and Transportation Management Systems, resulting in improved situation management during public safety emergencies.

COA AFD and EMS Records Management System means an incident reporting system which also allows for management of data relating to personnel, fleet, patient records, building inspections, and other business needs specific to the AFD and EMS Departments.

COA Police Records Management System means an incident reporting system which also allows for management of data relating to personnel, fleet, facilities, and other business needs specific to the Police Department, integrated with the CAD and accessible to law enforcement agencies of other municipal and governmental entities.

GATRRS means the Greater Austin-Travis County Regional Radio System which consists of an 800 MHz regional trunked radio system that provides total inter-departmental communication capability between all agencies using the new network, portable radio coverage throughout Travis County and surrounding areas, adequate capacity to meet long-term needs for ten (10) years, survivability during adverse weather conditions, and secure communication with limited unauthorized access to sensitive information.

Internal Program System means a system that is operated by one Party without using Shared Employees to support any portion of the System.

Shared System means a system that is operated by one or more of the Parties and does use Shared Employees to support it.

Transportation Management Systems means systems that includes closed circuit television (CCTV) video cameras and monitors, dynamic message signs, vehicle detectors, traffic signal timing, lane control signals, command and control software, courtesy patrol, and highway advisory radio (HAR) to provide travelers with information about the transportation system allowing them to make informed decisions to avoid travel delays and is integrated with other regional systems.

Systems Improvements means all hardware and software procured for each System.

TxDOT means the Texas Department of Transportation.

Working Day means Monday through Friday except for the following holidays celebrated on the day noted:

New Year's Day	January 1 or Monday after if that date is on a weekend
Confederate Heroes	January 19

MLK Day	Third Monday in January
President's Day	Third Monday in February
Texas Independence Day	March 2
San Jacinto Day	April 21
Memorial Day	Fourth Monday in May
Independence Day	July 4 th or Monday after if that date is on a weekend
Labor Day	First Monday in September
Veteran's Day	November 11 or Monday after if that date is on a weekend
Thanksgiving	Fourth Thursday and Friday in November
Christmas Eve	December 24
Christmas	December 25
Boxing Day	December 26

4. **Purpose.** The purpose of this Agreement is to establish and maintain an operational and management structure to provide authority to Parties for ongoing administration and management of the Program, including establishing an organizational structure and funding process. The Program is organized and operates in accordance with all applicable Legal Requirements.

5. **Amendment of Agreement.**

5.A. **Agreement.** The Agreement is seldom amended and, when amended, is usually amended as an "Amended and Restated Agreement." Amendments to the Agreement involve changes to the Parties, changes to the organizational structure, and similar long term changes. These may be initiated by a Party or by Members of the Governing Board or the General Manager. An amendment to the Agreement is not effective until approved by the governing bodies, or their legally authorized representative, of all Parties.

5.B. **Exhibits.** Some exhibits are amended annually and others only when a change has occurred or is desired. Exhibits may be amended upon a two-thirds majority vote of the Operating Board, followed by a two-thirds majority vote of the Governing Board to submit the proposed exhibit to the governing bodies of the Parties as needed in accordance with the law applicable to each governing body. If approval authority is delegated by law to an authorized representative of a Party, approval of the Exhibit by that representative has the same effect for that Party as approval by the governing body has for other Parties. An amendment to an exhibit becomes effective as to all Parties on the date of approval by last Party to approve the amended Exhibit.

6. **Governing Board.**

- 6.A. **Purpose.** The Governing Board shall annually approve a draft Budget and recommend funding of the Budget to the governing bodies of the Parties in August of each year. The Governing Board also sets long term policy for the Program and assists in the resolution of Program issues.
- 6.B. **Composition.** The Governing Board is composed of one Member to represent each Party: the COA's City Manager; County's County Executive, Emergency Services; Cap Metro's President/CEO; and TxDOT's Austin District Engineer.
- 6.C. **Quorum.** Three (3) members of the Governing Board constitute a quorum to conduct business.
- 6.D. **Proxies.** Each Governing Board Member may appoint a Proxy to attend and vote in Governing Board meetings when the Member is absent. This Proxy appointment must be made in writing to the General Manager.
- 6.E. **Secretary.** The General Manager serves as secretary to the Governing Board. The General Manager may rely on staff support to make written minutes of each Governing Board meeting.
- 6.F. **Meeting Requirements.** The Governing Board shall meet at least annually, but additional meetings may be called.
- 6.G. **Actions of Governing Board.** The Governing Board may not take any action that violates or is in conflict with any Legal Requirements. If any such action is taken, it is void.
- 6.H. **Emergency Meetings.** The General Manager may call emergency meetings upon seventy-two (72) hours written notice to the Members to address emergencies or to address Budget related items, which may require action by the Parties' governing bodies to increase or decrease currently budgeted expenditures.

7. **Operating Board.**

- 7.A. **Purpose.** The Operating Board oversees the Program and provides overall Program direction.
- 7.B. **Composition.** The Operating Board is composed of members ("Members"), designated by the Party that the Member represents. Members must be executive-level management from each of the Parties, such as department heads, TxDOT District/Division/Assistant directors, or equivalent. A Party with multiple

departments that have separate management participating in the Program is entitled to one (1) Member on the Operating Board for each such department.

- 7.C. Terms.** The appointing Party determines the term of each Member. Each Operating Board Member serves at the pleasure of the appointing Party.
- 7.D. Attendance Requirements.** Either a Member or Proxy must attend all Operating Board meetings. If a Party is not represented by either its Member or one of the Member's Proxies at more than twenty-five percent (25%) of the Operating Board meetings at which the Party is authorized to vote during any calendar year, the Party must promptly appoint a new Member. The Operating Board schedules its meetings.
- 7.E. Proxies.** Each Member may designate in writing up to two (2) Proxies who may attend all Operating Board meetings but only one of whom may vote at Operating Board meetings when the Member is absent. Any Proxy must be at least an assistant or deputy department head level executive, or equivalent, but must not be officed in the Facility, with the exception of executives from the Travis County Emergency Management Department and COA Homeland Security and Emergency Management.
- 7.F. Notice of Membership or Proxy.** When a Party designates a person to represent it as a Member of the Operating Board, the Party must send a notice to the General Manager that names the newly appointed Member and states the date the appointment is effective. When a Member designates a person to act as Proxy of the Member, the Member must send a notice to the General Manager that names the newly appointed Proxy and states the date the appointment is effective. If there is a change in the designated Member or a Proxy, the Party or Member, as applicable, must send a notice of the change to the General Manager. The designations are not effective until the General Manager receives these notices. At least once each year, the General Manager sends a list of all designated Members and Proxies to the Members.
- 7.G. Chair, Vice-Chair, and Secretary.** The Chair is elected by the Members and must be a Member. A Vice-Chair and Secretary may also be elected by the Operating Board and must be Members. The General Manager, who is not a Member, provides the Secretary with staff support to make written minutes of each Operating Board meeting.

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- 7.H. Meeting Procedures.** The Chair presides at the meetings and the Vice-Chair acts in the absence of the Chair. Any Member may place items on the Operating Board's meeting agenda by submitting the item to the Chair at least ten (10) Days before the next meeting. The Chair shall submit the agenda to the Members no later than seven (7) Days before the meeting. The Chair or a majority of the Members may call special meetings of the Operating Board.
- 7.I. Quorum.** The Operating Board may not take any action without a quorum. There are two types of quorum. If a decision is brought to the Operating Board that affects a System(s) to which only some Members contribute, only those Members that contribute to the System(s) may be counted towards a quorum for purposes of that vote. That quorum consists of a majority plus one of the Members that contribute to that System. For those actions that require a majority vote of all of the Members of the Operating Board, the quorum consists of a majority plus one of all Members.
- 7.J. Voting Rights.** Each Member has one vote. If a Party has multiple Members, only the Members using and contributing to the Systems being affected by an action or determination may vote on any matter affecting those Systems. A majority vote of the applicable quorum present at a meeting is required to authorize any action or determination by the Operating Board.
- 7.K. Duties.** The Operating Board meets at least quarterly. The Operating Board examines the apportionment of Program costs between the Parties and recommends any adjustments needed to reflect the beneficial use of the Program by each Party. The Operating Board annually submits a draft Operating Budget and Capital Costs Budget to the Governing Board regarding funds needed to maintain, operate, and use the Program. In addition, the Operating Board provides input into evaluating the performance of the General Manager and provides input into hiring any new General Manager. The COA's City Manager gives great weight to the Operating Board's evaluation and input, but retains ultimate hiring and firing responsibility. The Operating Board may establish subcommittees for a specific purpose or effort.
- 7.L. Actions of Operating Board.** The Members may vote on dispute resolution proceedings, on matters concerning Systems to which they contribute, and on budget recommendations to the Governing Board. The Members also provide input, review and adopt operating policies and procedures for CTECC. The

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Operating Board may not take any action that violates or is in conflict with any Legal Requirements. If any such action is taken, it is void.

7.M. Emergency Meetings. The General Manager may call emergency meetings upon seventy-two (72) hours written notice to the Members to address emergencies or to address Budget related items, which may require action by the Parties' governing bodies to increase or decrease currently budgeted expenditures.

8. Manager Committee.

8.A. Purpose. The Manager Committee meets to discuss and review day to day operations of the Program.

8.B. Composition. The Manager Committee is comprised of the Operational Managers of each Agency. The Operational Managers of each Agency may appoint a Proxy to represent her/him at Manager Committee meetings.

8.C. Meetings. The Manager Committee shall meet monthly or as agreed by members of the Manager Committee. The General Manager shall facilitate the Manager Committee meetings and provide staff to take meeting minutes.

8.D. Duties. The Manager Committee shall provide input to the General Manager regarding day to day operations of CTECC. The Manager Committee shall develop and recommend standard operating procedures to the Operating Board for adoption. After adoption, the General Manager and the Manager Committee periodically review the standard operating procedures and may recommend any reasonably necessary changes for adoption.

9. Shared Employees and Operations.

9.A. General Manager. The General Manager shall manage the day to day operations of the Program under the direction of the Operating Board. The General Manager is responsible for the day to day operation of the Facility, the Shared Employees and their support of the Systems. The COA's City Manager determines the hiring and firing of the General Manager as General Manager of CTECC with input from the Operating Board.

9.B. Duties of the General Manager. The General Manager shall:

1. Coordinate Operating Board meetings,

2. Maintain minutes of meetings and Program records,
3. Assure compliance with applicable provisions of the Texas Open Meetings Act, Government Code, Chapter 551,
4. Make recommendations to the Manager Committee or the Operating Board on the operation and maintenance of the CTECC,
5. Be responsible for the Shared Employees,
6. Provide the first level of administrative dispute resolution as described in **Section 18**,
7. Be empowered by the all Parties to make decisions regarding day to day operational issues, including making expenditures for budgeted replacement of furniture and equipment, routine repairs, and maintenance in accordance with the Budget,
8. Maintain a current copy of this Agreement, including any amendments, and the most current version of all Exhibits in the General Manager's Office, together with copies of the most current versions of any subsequently developed additional operating procedures or standards, the Lease, all other Program or System related Interlocal Agreements, all related plans, specifications, equipment information and warranties, all other related contracts, and Budget documents,
9. Become involved in a non-COA Party's Internal Program operations only to the extent that issues cross boundaries between Parties or Systems, and the issues cannot be otherwise resolved,
10. Negotiate service level agreements, or equivalent agreements, with the Parties upon written request, including agreements with Party's non-System departments or divisions.
11. Provide quarterly service level reports to the applicable Parties, which they use to review services, staff, resource requirements, and Cost allocations,
12. Provide quarterly (or upon request by the Operating Board, monthly) Budget reports,
13. Immediately call an emergency Operating Board meeting and provide a special Budget report to determine how to fund any unanticipated expenditure or how to reduce budgeted expenditures,

14. Call meetings of the Operating Board Members supporting a particular System to facilitate decision-making about that System and implement any decision reached by a consensus among the affected Members,
15. Upon request, provide job descriptions for the Shared Employees, and
16. Provide annual reports targeting the suggested objectives and performance measures shown on **Exhibit D**.

9.C. Shared Employees. COA provides the Shared Employees to conduct the day to day activities for the Program. **Exhibit B-2** sets out the number and types of employees (FTE) that are recommended for each year as the Shared Employee staffing required to operate the Program. The COA includes the total costs of the Shared Employees in each year's COA Budget and the other Parties reimburse COA for a portion of the Cost of the Shared Employees in accordance with the Budget.

9.D. Operating Procedures. The General Manager shall work with the Manager Committee to prepare recommended standard operating procedures to govern the day to day management and operation of the Facility and its Shared Systems and Shared Employees ("Standard Operating Procedures"). The General Manager submits these Standard Operating Procedures to the Operating Board for review and adoption. After adoption, the General Manager submits any changes the Manager Committee recommends as reasonably necessary to the Operating Board for adoption. The General Manager also monitors implementation and compliance with the Standard Operating Procedures. If there is any conflict between the Standard Operating Procedures and the personnel practices and policies of a Party, then the personnel practices and policies of the Party prevail.

9.E. Limitations on General Manager.

9.E.1. The General Manager does not supervise, manage, or direct any non-COA Party's Internal Program Employees. All Internal Program Employees must cooperate and coordinate with the General Manager, the Shared Employees, and the Internal Program Employees of other Parties.

9.E.2. Operating service level agreements between other Agencies, or their departments must be agreed to by all involved Parties.

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9.E.3. If an issue related to a particular System exists and the Members supporting that particular System cannot reach a consensus at a meeting of the affected Operating Board Members, the General Manager refers decision-making about that particular System to the Governing Board and schedules it for action at their next Board meeting or a specially called Governing Board meeting, if necessary.

10. Budget.

10.A. Annual Operating Budget. The General Manager shall prepare an annual operating budget for the Program (“Operating Budget”) on a COA fiscal year (October 1 to September 30) basis for review by the Operating Board and approval by the Governing Board for recommendation to the governing bodies of the Parties for adoption. The Operating Budget must provide for all Operating Costs associated with operating the Facility, Shared Systems, and Program each year, as shown on **Exhibit B**.

10.B. Annual Capital Costs Budget. The General Manager shall prepare an annual capital costs budget for the Program (Capital Costs Budget) on a COA fiscal year (October 1 to September 30) basis for review by the Operating Board and approval by the Governing Board for recommendation to the governing bodies of the Parties for adoption. While the General Manager recommends a Capital Costs Budget annually, the planning period for expenditures budgeted as Capital Costs is five years.

10.C. Budget Format. The FY2019 adopted Budget, including the Participation or Cost allocation and List of Shared Employees, is attached as the adopted format for **Exhibit B**.

Each proposed annual Budget must be submitted to the Operating Board and Governing Board in April of each year. Upon at least a majority vote of all Members of the Governing Board, they recommend the Budget for adoption by the governing body of each Party, as applicable.

When the Parties approve the Operational Budget and the Capital Costs Budget, the Budget replaces **Exhibit B** for the applicable fiscal year and is effective upon approval of the last Party to approve the Budget.

10.D. Budgeted Expenditures. After the Parties approve and fund the Budget, the COA City Manager has the authority to incur expenses in accordance with the Budget. If any expenses in excess of the approved and funded Operating Budget or Capital Cost Budget are to be uncured, The Parties must approve and fund the additional Budget or re-allocate existing funds.

10.E. Payment of Expenses. COA must pay invoices for the expenses of the Program which may include COA Program Management and Administrative Services Costs approved in any adopted Budget.

10.F. Funding Transfers to COA. From actual expenditures, COA provides timely and accurate monthly invoices to each Party to facilitate the transfer of funds by each Party to COA.

10.F.1. Reports. COA must provide each Party with a monthly Budget report, including current Program Cost projections for the succeeding month. The Budget reports include a quarterly cash flow reconciliation of estimated versus actual Costs.

10.F.2. Party Financial Representatives. COA shall send Budget reports, invoices, statements, and demands for interest earnings to the following designated Financial Representatives:

COA:	CTECC Financial Manager
Travis County:	County Executive, Emergency Services
TxDOT:	Austin District Engineer
Cap Metro:	Controller

10.G. State Budget Process. Because the State of Texas sets the budget for TxDOT and budgets on a two (2) year basis, for TxDOT references to annual budget requirements are interpreted to mean biennial budget requirements and annual Budget date requirements are interpreted to mean biennial date requirements.

10.H. Funding.

10.H.1. Responsibility for Funding. Each Party acknowledges that its future right to participate in the Program is dependent upon fully funding its share of the Budget and its Internal Program Costs.

10.H.2. Shared Funding. The Parties each specifically acknowledge that funding for that Party's share of the Budget has gone through that

Party's normal budgeting process; is current revenue available to that funding Party; and has been approved by its governing body for payment to COA for actual Program expenditures made in accordance with the Budget and in compliance with COA's purchasing requirements.

10.H.3. Internal Program Funding. The Parties each further acknowledge that the funding for that Party's own annual "**Internal Program Costs**" are separate and in addition to the Costs in the Budget and that the budget which that Party's governing body adopts specifically includes sufficient appropriations for both its allocated portion of the Budget and its Internal Program Costs.

10.I. Failure to Fund. If any Party authorizes funding at less than their allocated amount recommended by the Governing Board, the other Parties at their sole discretion and by majority vote, must take one of the actions described in **Section 10.J.** within thirty (30) Days after any Party's governing body authorizes expenditures for less than that Party's allocated portion of a future budget. If no action is taken, the underfunded year's Budget is automatically reduced by the unfunded assessment. If the Budget is automatically reduced, the Parties must promptly revise **Exhibit B** to reflect the new Budget amount, unless the Partial Funding is resolved under **Section 10.J.** If any Party fails to provide any funding for its share of the Budget or its Internal Program Costs, that Party is deemed to have provided its twenty-four (24) month notice of termination of its participation in this Agreement and the Parties follow the procedures for termination of a Party set out in **Section 17. Termination.**

10.J. Partial Funding. If any Party authorizes funding at less than the amount recommended for that Party by the Governing Board, or if any Party fails to fully fund its Internal Program Costs (herein called the "Underfunding Party"), the other Parties may take one of the following actions:

10.J.1. Amend the Budget and then reduce System services, Operating Board representation, and voting rights to the Underfunding Party with such reductions being consistent with the Underfunding Party's continued participation in Systems, if any.

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- 10.J.2.** Reduce the Budget by the amount underfunded by cutting Costs, in the following priority: nonessential services to the Underfunding Party, other services deemed non-essential by the other Parties, and, only if reasonably necessary, essential services to the Underfunding Party.
 - 10.J.3.** Assess the Underfunding Party an amount, which is the difference in the Underfunding Party's Budget **Exhibit B** allocation and the amount of funding provided by the Underfunding Party ("Assessment"). An Underfunding Party shall fund the Assessment, and its entire portion of the next annual Budget in its next budget cycle.
 - 10.J.4.** Amend the Budget by increasing the amounts paid by the other Parties based on a cost-benefit analysis of the Program and Systems value to those Parties with an acknowledgement of the non-quantifiable value to public safety of certain essential Program services with a proportionate increase in Operating Board representation for the Parties commensurate with the additional funding provided.
 - 10.J.5.** Terminate the Underfunding Party's participation in this Agreement by following the procedure for termination of a Party, if the level of funding is deemed substantially a failure to fund by the other Parties.
- 11. Federal Funds and Bond Funds.** If a Party uses federal funds, grant funds, or bond funds to meet a portion of their financial commitment under this Agreement, the Parties conduct all procurements, maintain all records, and otherwise conduct their activities in furtherance of this Agreement so as to comply with all applicable statutes, regulations, policies, and grant contract provisions necessary to qualify the Program expenditures for federal or grant program reimbursement and to avoid arbitrage penalties. Further, the Parties must cooperate with each other in the application for and administration of federal funds, grant funds, or bond funds to maximize funding participation in the operation and maintenance of the Program. Each Party intending to use federal funds, grant funds, or bond funds to meet a portion of its annual financial commitment shall annually notify the other Parties when those funds are obligated to the Program.

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12. Records.

12.A. Preparation of Records. The General Manager shall maintain the financial records in accordance with generally accepted accounting standards, including compliance with federal guidelines for spending federal funds or bond proceeds.

12.B. Retention of Records. The General Manager retains records in accordance with applicable State of Texas records retention schedule(s).

12.C. Inspection of Records. Upon three (3) Days written notice, any Party may inspect, copy, and audit the records related to this Agreement.

13. Contracting Authority. The Parties specifically agree that the COA City Manager has the authority to contract on behalf of the Parties for items that have been approved in the Budget, so long as the payments are made from available funds, using the COA's standard purchasing processes, unless expenditure of federal funds or bond proceeds requires use of additional guidelines.

14. Allocation of Costs. There are several categories of percentages that the Parties pay, depending on the nature of the Cost. The percentages are shown on **Exhibit B-1**.

15. Parties' Systems Operation.

15.A. The Parties may operate those Systems for which they are responsible separately or may integrate their operation with other Systems from the CTECC, if appropriate. Each Party is responsible for the operation of any System that is funded as a part of its Internal Program Costs. The COA is responsible for the operation of the Shared Systems.

15.B. Each Party shall have primary authority over all its respective Internal Program Employees and Internal Program Systems, if any.

16. Emergency Management Operations. The administrative offices of the COA Homeland Security and Emergency Management Department and Travis County Office of Emergency Management are located in CTECC. COA Homeland Security and Emergency Management Department and the Travis County Office of Emergency Management share the operational and capital costs for the shared Emergency Operations Center located at CTECC.

17. Termination.

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17.A. Voluntary Termination. This Agreement may be voluntarily terminated by the agreement of all of the Parties. Further, any non-COA Party to this Agreement may withdraw from this Agreement and terminate its participation in this Agreement (“Terminating Party”) by giving twenty-four (24) months written notice to the Remaining Parties. The termination becomes effective on the first Day after the twenty-four (24) month notice period ends (“Effective Termination Date”). Such Terminating Party must continue to fund its portion of the Budget up to its Effective Termination Date. If it does so, the Terminating Party may continue to participate in the Program and Systems until the Terminating Party’s Effective Termination Date. If it fails to provide funding for its portion of the Budget, the Terminating Party’s ability to participate in the Program and use the Systems immediately terminates through the Effective Termination Date. The portion of the Budget allocated to a Terminating Party after receipt of the notice of termination may be reduced by agreement of the Remaining Parties.

17.B. Termination for Cause. After a unanimous vote of the non-defaulting Parties, they may terminate the participation of any other Party for cause, including a Party’s failure to fully fund or failure to pay for Budgeted Costs, by delivery of a written notice of default which specifies the default under a material provision of this Agreement and indicates that the default must be cured within thirty (30) Days or the Party’s interest in this Agreement automatically terminates. However, if the defaulting Party begins to cure the default, the thirty (30) Day cure period continues to be extended as long as the defaulting Party continues to diligently prosecute the cure to completion. Despite the immediately preceding sentence, an Assessment under **Section 10.J.3** may only be cured on or before the start of the next Budget cycle after an Assessment is made to a Party.

17.C. Rights of Remaining Parties. After the undepreciated value of the Systems in which a Terminating Party participated (“System Value”) is determined, the Remaining Parties must consider alternatives, including but not limited to one of the following:

1. Finding another governmental entity to assume the System Value;
2. Dividing the System Value proportionally among the Remaining Parties;
3. Allowing one Remaining Party to assume the System Value;

4. Allowing the Terminating Party to retain its System Value with the stipulation that use of the System(s) will not be made available to that Party, unless and until the Party agrees to pay its Assessment as set out in **Section 10.J.3**; or
5. The Remaining Parties providing for any payment for System Value to the Terminating Party by amendment to this Agreement.

17.D. Duties of Remaining Parties. Any Remaining Party that assumes all or part of the System Value of a Terminating Party assumes all duties and obligations related to that right. The Remaining Parties must agree on a new allocation of costs under **Section 10. Budget** and **Exhibit B**.

17.E. Voting to Exercise Rights under Section 17.C. The Remaining Parties make the decision about whether to exercise rights granted by **Section 17.C.** and the votes needed for the Remaining Parties to make a decision do not include those of the Terminating Party, or any votes allocated to the Terminating Party.

17.F. Effect of Termination on Remaining Parties. A termination by a Party has no effect on a Remaining Party's rights to participate in the System Value, Program, Facility, or any System other than the specific rights and duties set out in this **Section 17. Termination**, and the continuing duty of all Remaining Parties to pay their share of Costs as Budgeted.

17.G. Rights of the Parties upon Termination or Expiration of Agreement. Upon termination or expiration of this Agreement, the non-COA Parties shall vacate the CTECC and the Facility. Within thirty (30) Days after termination or expiration of this Agreement, the non-COA Parties shall remove their separate personal property, furniture, fixtures and equipment, including any property the removal of which may cause non-structural damage to the Facility. Any non-structural damage must be repaired to the reasonable satisfaction of the COA within fifteen (15) Working Days after the non-COA Party has removed its property. Forty-five (45) Days after termination or expiration of this Agreement, COA may enter and peacefully assume possession and may take possession by summary proceedings, or by action at law or in equity or by force or otherwise, without being liable in trespass or for any damages. These rights and remedies given to the COA are, and are deemed to be, cumulative of any other rights of the COA under law. The exercise of any right

may not be deemed to be an election of rights. However, upon termination or expiration of this Agreement, the Parties may elect to continue this Agreement by mutual agreement of the Parties instead of implementing this section.

18. Dispute Resolution Process.

18.A. All Parties are encouraged to work together to resolve all disputes prior to involving the General Manager or the Operating Board.

18.B. A dispute may be withdrawn at any time during the Dispute Resolution process.

18.C. Timeframes:

18.C.1. Initial Dispute Discussion.

18.C.1.a. Any Party must first bring an issue or dispute to the General Manager for review and recommendation by delivery of a written notice to the General Manager. Within ten (10) Working Days after the General Manager receives the notice, she or he must schedule a meeting with the Party submitting the notice and any other appropriate Party or third party. The General Manager must provide written notice of his or her decision to all applicable Parties within five (5) Working Days after the meeting.

18.C.1.b. If the dispute is with the General Manager, the notice must be given to the Vice Chair of the Operating Board. Within ten (10) Working Days, the Vice Chair of the Operating Board must schedule a meeting of the Operating Board with General Manager and the Party submitting the notice. The Operating Board hears the matter and provides a written notice of its decision to all applicable Parties within five (5) Working Days after the meeting.

18.C.2. Appeal to Operating Board. A Party wishing to appeal the decision of the General Manager or the Operating Board must make written notice of appeal within five (5) Working Days after receipt of the written decision. An appeal of the General Manager's decision is addressed to the Vice Chairman of the Operating Board. The Vice Chair must schedule a meeting of the Operating Board within fifteen

(15) Working Days of receipt of the notice and provide a written decision to the appropriate Parties within five (5) Working Days after the meeting. Any appeal of the decision of the Operating Board is to the Governing Board.

18.C.3. Appeal to Governing Board. Any appeal from the decision of the Operating Board must be made by delivery of written notice of appeal to the General Manager and the Governing Board within ten (10) Working Days after receipt of the Operating Board's decision. The Governing Board may meet to hear the appeal or may elect to send the appeal to mediation. The Governing Board, assisted by the General Manager, either schedules a hearing or sends the appeal to mediation within twenty-five (25) Working Days of receipt of the notice of the appeal. Any appeal from the Governing Board's recommendation is to a mediator.

18.C.4. Mediation.

18.C.4.a. If Mediation is the method to finalize the administrative appeal process and the dispute is not with the General Manager, the following process applies. The Parties participating in mediation endeavor to agree on the choice of a mediator within five (5) Working Days of the delivery of any notice of appeal or of the Governing Board's recommendation of mediation. If the Parties cannot agree on the choice of a mediator, each participating Party chooses a qualified mediator. Within five (5) Working Days after the participating Parties choose their mediators, those mediators choose another mediator to hear the appeal. The mediator chosen must schedule mediation within twenty (20) Working Days after being chosen, unless the Parties to the mediation agree to a different time schedule. The mediator must provide notice of the date, time, and location of the mediation to the General Manager, who must be allowed to attend or send a designee. However, if the subject matter of the

mediation is about ~~dispute with~~ the General Manager, neither the General Manager nor a designee may attend. [BW1]

The General Manager or his/her designee may otherwise participate in the mediation, and may attend all joint sessions. The mediator must provide a written decision to the applicable Parties and the General Manager within fifteen (15) Working Days after the mediation.

18.C.4.b. If the dispute is with the General Manager, the same process for selection of the mediator and setting the time and place of the mediation applies. The General Manager must participate in the mediation as one of the disputants but without a designee observer. The mediator must provide a written decision to the applicable Parties and the General Manager within fifteen (15) Working Days after the mediation.

18.C. 5. Appeal. Any appeal of the decision of the mediator may be to an appropriate state court in Travis County, Texas, and is a trial de novo.

19. Miscellaneous.

19.A. Interlocal Agreement. This Agreement is an Interlocal Agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each Party represents that in the performance of its respective obligations in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each Party represents that the compensation to be made to the other Parties in this Agreement is in an amount intended to fairly compensate each performing Party for the services or functions each provides, and are made from current revenues available to the paying Party.

19.B. No Assumption of Liability. No Party assumes the liability for the System(s) under the control of any other Party or for the actions of employees of any other Party. No Party is responsible for the acts or omissions of any other Party regarding

the use, installation, operation, maintenance or updating of any of the Systems or equipment located within the CTECC.

19.C. Immunity as a Defense. No signatory Party has agreed to waive any defense, right, immunity, or other protection under law including any statutory provision, by entering into this Agreement or by otherwise participating in the Program.

19.D. Relationship of Parties. The parties acknowledge that they are not an agent, or employee of any other Party, and that each Party is responsible for its own acts and deeds and for those of its agents and employees. The Parties expressly acknowledge that this project (Facility, Program, and Systems) is not a joint venture, enterprise, or partnership. However, if a court should find that the Parties are engaged in a joint venture, enterprise, or partnership, then the responsible Party shall pay any liability adjudicated against another Party for acts and deed of the responsible Party, its employees or agents.

19.E. Retention of Defenses. The Parties acknowledge that neither this Agreement nor the operation or use of the Facility and Systems by the Parties affect, impair, or limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated on premises defects.

19.F. Notices. [BW2] Notices required under this Agreement must be in writing and delivered personally or sent by certified U.S. Mail, postage prepaid, addressed to such Party at the following respective addresses:

City: City of Austin
P. O. Box 1088
Austin, Texas 78767
ATTENTION: City Manager, with a copy to City Attorney

County: County of Travis, State of Texas
P. O. Box 1748
Austin, Texas 78767
ATTENTION: County Executive, Emergency Services

TxDOT: Texas Department of Transportation
Director of Contract Services
125 East 11th Street
Austin, TX 78701-2483

Cap Metro: Capital Metropolitan Transportation Authority
2910 E. 5th St.

Austin, Texas 78702
ATTENTION: President/CEO
With a copy to the Chief Counsel

All notices so given are deemed given on the date delivered or transmitted or deposited in the mail. All Parties may change their address by sending written notice of the change to the other Parties in the manner provided for in **Section 19.F.** In **Section 10.E.2.**, each Party's representative may be different than the person listed for notice in **Section 19.F.**, but the address is the same unless otherwise noted.

- 19.G. Assignment.** Because this Agreement is based upon the special qualifications of each Party, any assignment or other transfer of any rights under this Agreement or any part of it without the express consent in writing of all other Parties is void.
- 19.H. Entire Agreement.** The entire agreement between the Parties is contained in this Agreement and its Exhibits and no change in or modification, termination, or discharge of this Agreement in any form whatsoever is valid or enforceable unless it is in writing and signed by duly authorized representatives of all Parties.
- 19.I. Prior Agreements.** This Agreement supersedes any and all prior agreements regarding this subject which may have previously been made.
- 19.J. Severability.** If any provision of this Agreement is, to any extent, rendered invalid or unenforceable, the remainder of this Agreement is not affected, and each other provision of this Agreement remains valid and enforceable to the fullest extent permitted by law.
- 19.K. Non-waiver.** Failure of a Party to exercise any right or remedy for a breach or default of any other Party does not waive that right or remedy if a subsequent breach or default occurs.
- 19.L. Authority of Signatories.** Each Party represents to all the other Parties that the representative signing this Agreement on its behalf has been duly authorized by the governing body of that Party in compliance with Texas law.
- 19.M. Further Assurances.** Each Party agrees to perform all other acts and execute and deliver all other documents that may be necessary or appropriate to carry out the intent and purposes of this Agreement.

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19.N. Exhibits. The Exhibits, which are attached hereto and described below, are incorporated herein and made a part hereof for all purposes.

Exhibit List

Exhibit A – Governance Flow Chart

Exhibit B –Budget Current Year,

B-1 Participation Table (Cost Allocation)

B-2 Required Program FTE Staffing

Exhibit C – Facility, Exclusive Facilities, Shared Facilities

Exhibit D – Objectives and Performance Measures

19.O. TxDOT Inability to Pay for Insurance. In recognition of the statutory prohibition against state agencies purchasing insurance, absent specific statutory authority to do so, the COA, as Landowner, has agreed to pay for that portion of insurance costs that would otherwise be assessed to TxDOT in the Budget under Contractual Costs. If a disaster occurs that includes covered losses, which would provide insurance coverage to repair or rebuild all or a portion of the Facility and replace all or a portion of the Systems, TxDOT must transfer to the COA its portion of the money needed to rebuild all or a portion of the Facility and replace all or a portion of the Systems within one hundred eighty (180) Days. If the loss is less than the deductible, or if the loss is not covered under the insurance policy, all Parties pay their **Exhibit B-1** cost allocation share of the costs to repair or rebuild all or a portion of the Facility and replace all or a portion of the Systems on a reimbursement basis.

19.P. Occupancy Limits. Agencies must assign staff who are directly involved in the day to day emergency management or transportation management or emergency call handling and dispatch operations of the Agency to work on a daily or regular basis at CTECC. Significant changes in the type and number of staffing by an Agency must be approved by the Operating Board.

19.Q. Gratuities

Any person who is doing business with or who reasonably speaking may do business with a Party under this Agreement may not make any offer of benefits, gifts, or favors to employees of the Parties.

19.R. Conflict of Interest

The Parties shall not assign an employee to a project if the employee:

1. Owns an interest in or is an officer or employee of a business entity that has or may have a contract with the state relating to the project;
2. Has a direct or indirect financial interest in the outcome of the project;
3. Has performed services regarding the subject matter of the project for an entity that has a direct or indirect financial interest in the outcome of the project or that has or may have a contract with one or more of the Parties;
or
4. Is a current part-time or full-time employee of one of the Parties.

19.S. License for TxDOT Logo Use

19.S.1. TxDOT acknowledges that this license does not authorize TxDOT to display its Logo at or on CTECC.

19.S.2. Grant of License; Limitations: The non-TxDOT Parties are granted a limited revocable non-exclusive license to use the registered TxDOT trademark logo (TxDOT Flying “T”) on any deliverables prepared under this Agreement that are the property of the State. The non-TxDOT Parties may not make any use of the registered TxDOT trademark logo on any other materials or documents unless it first submits that request in writing to the State and receives approval for the proposed use. The non-TxDOT Parties agree that they shall not alter, modify, dilute, or otherwise misuse the registered TxDOT trademark logo or bring it into disrepute.

19.S.3. Notice of Registration Required: The non-TxDOT Parties’ use of the Flying “T” under this subsection shall be followed by the capital letter R enclosed within a circle (®) that gives notice that the Flying “T” is registered in the United States Patent and Trademark Office (USPTO).

19.S.4. No Assignment or Sublicense: The non-TxDOT Parties may not assign or sublicense the rights granted by this subsection without the prior written consent of the State.

19.S.5. Term of License: The license granted to the non-TxDOT Parties by this subsection shall terminate at the end of the term specified by this Agreement.

19.T. **Duplicate Originals:** This document may be executed in duplicate originals.

FOR THE STATE OF TEXAS

TEXAS DEPARTMENT OF TRANSPORTATION

Date: _____

By: _____
James M. Bass, Executive Director

CITY OF AUSTIN

Date: _____

By: _____
Spencer Cronk, City Manager

TRAVIS COUNTY, TEXAS

Date: _____

By: _____
Sarah Eckhardt, County Judge

**CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY**

Date: _____

By: _____
Randy Clarke, President/CEO