

DRAFT 1.22.22 – v.3
INTERLOCAL AGREEMENT BETWEEN
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AND
CITY OF LEANDER
FOR
BUILD CENTRAL TEXAS

This Interlocal Agreement (“Agreement”) is entered into by and between the City of Leander, a home rule City, (hereinafter “Leander” or “Suburban Community”) and Capital Metropolitan Transportation Authority (“Capital Metro”) a transportation authority and political subdivision organized under Chapter 451 of the Texas Transportation Code. Capital Metro and Leander are referred to in this Agreement individually as a “Party” and collectively as the “Parties”.

I. Recitals

Whereas, this Agreement is authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code;

Whereas, each Party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function that it is authorized to perform individually under the applicable statutes of the State of Texas or its charter;

Whereas, Capital Metro has developed the Build Central Texas Program – Suburban Communities Program (“BCT Program”) to meet the transportation infrastructure needs of suburban cities and portions of counties in the Capital Metro service area by providing for their transportation system improvement projects;

Whereas, the Parties now desire to enter into a mutually beneficial agreement that meets the transportation mobility needs of both Parties; and

NOW THEREFORE, in consideration of mutual covenants and agreements contained herein, the Parties agree to the terms and conditions below as evidenced by the signatures of their respective authorized representatives.

II. BCT Program Funding, Guidelines and Procedures

- A. Funding for Leander in the BCT Program will be allocated annually in a sum equal to the difference between the sales tax contributions attributed to Leander and the total cost of service attributed to Leander for the prior fiscal year. For the purposes of this Agreement, total cost of service shall be defined as operations and maintenance costs for transit service provided to Leander and 50% of the total capital depreciation of commuter rail assets (net of grant and capital contribution revenue). For Fiscal Year 2022, the amount to meet the definition above is agreed to be \$1,921,057. In future fiscal years, Capital Metro staff will notify Leander of the amounts allocated to Leander based on the prior year sales tax receipts contribution and total cost of service, and the terms and conditions of this Agreement will apply.
- B. Capital Metro shall provide audited annual financial statements to Leander upon request. All cost information and service metrics are available monthly on the Capital Metro website dashboard. Any additional data valuable to Leander will be reasonably provided upon request.

- C. Once Capital Metro staff notifies Leander of a fiscal year allocation under this Agreement, Leander shall submit to Capital Metro a proposed project list for that fiscal year in accordance with the Suburban Communities Program Procedures and Guidelines attached to this Agreement as **Exhibit A** (the “BCT Guidelines and Procedures”). A project list for Fiscal Year 2022 shall be submitted by April 15, 2022. If a project list for any fiscal year is not submitted to Capital Metro by the end of the calendar year in which funds are allocated, then such fiscal year funds are forfeited.
- D. Notwithstanding **Exhibit A**, Invoicing and Payment Section 4., Capital Metro shall make payments to Leander, under this Agreement, as follows: a check for fifty (50%) of the Fiscal Year 2022 allocation will be available on June 1, 2022, provided a project list is submitted by April 15, 2022. Each fiscal year allocation under the Agreement shall be mailed to Leander upon submittal of an approved project list for the fiscal year in which the funds are allocated and an invoice on Leander City letterhead. Payment of the remaining amounts allocated for each project shall be made upon submission of an invoice from Leander, together with satisfactory documentation for payment, in accordance with an established project milestone schedule agreed upon by the Parties prior to commencement of the project. Capital Metro shall pay all invoices in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. Capital Metro shall have the right to audit project documentation to ensure compliance with the terms of this Agreement and the Program Guidelines and Procedures.
- E. Capital Metro shall provide Leander requested technical or project assistance in pursuing federal grant funds to complement the funding available under the Program that supports transit supportive infrastructure and joint Leander and Capital Metro goals.
- F. Leander will comply with the BCT Guidelines and Procedures, which set out the rules and regulations governing participation in the BCT Program and payments to be made to Leander under this Agreement. Capital Metro reserves the right, in its sole discretion to make amendments to the BCT Program Guidelines and Procedures from time to time.

III. Term and Termination

- A. The initial term of this Agreement is from the date of the last Party to sign (“Effective Date”) through September 30, 2032. After the initial term, the Agreement will automatically renew annually on the anniversary of the Effective Date unless either Party provides written notice ninety (90) days in advance of the end date of its intent not to renew. Notwithstanding anything to the contrary, the Parties may mutually agree to terminate this Agreement at any time.
- B. If for any fiscal year, funds are not appropriated or allocated by one of the Parties to this Agreement, for such Party’s performance of its obligations under this Agreement, this Agreement shall become void, without penalty to either Party, and the Party shall promptly give notice to the other Party that funds were not appropriated or allocated.
- C. If Capital Metro becomes subject to a legislative change, revocation of statutory authority, or lack of funds which would render Capital Metro’s performance under this Agreement impossible or unnecessary, this Agreement will be terminated or cancelled and be deemed null and void. In the event of such termination or cancellation, Capital Metro will not be liable to Suburban Community for any damages, which are caused or associated with such termination, or cancellation.

IV. General Provisions

- A. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns, including without limitation, any receivers, administrators, or trustees in bankruptcy.
- B. Severability. If any provision of the Agreement will, for any reason, be held to violate any applicable law, and so much of the Agreement is held to be unenforceable, then the invalidity of such a specific provision will not be held to invalidate any other provisions, which other provisions will remain in full force and effect unless removal of said invalid provisions destroys the legitimate purpose of the Agreement, in which event the Agreement will be canceled.
- C. Cooperation. The Parties to this Agreement agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- D. Independent Contractor. This Agreement will not be construed as creating an employer-employee relationship, a partnership, or a joint venture between the Parties.
- E. Entire Agreement. This Agreement, together with Exhibit A, represents the complete and entire agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the subject of this Agreement.
- F. No Amendment of Other Agreements. Unless otherwise expressly stipulated in this Agreement, this Agreement is separate from and is not an amendment or modification of any other agreement between the parties.
- G. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, exclusive of its choice of law provisions. Both parties recognize that Leander and Capital Metro are subject to the Texas Public Information Act ("TPIA") and unless accepted by that Act, documents and information in Leander's and Capital Metro's possession are subject to public disclosure.
- H. Venue. Venue for any action arising under this Agreement will be in Travis County, Texas.
- I. Interpretation of Laws and Authorities. All federal and state contractual provisions, as applicable, will be included in any corresponding contracts or procurements by the Parties. The Parties shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered into by the individual Party in support of the contract work. The Parties will retain responsibility for ensuring that the performances rendered under any subcontracts comply with all requirements of this Agreement as if the respective Party, entering into the subcontract, rendered such performances. In no event does this provision relieve each Party of its individual responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Agreement.
- J. Notices. Any notice given hereunder by either Party to the other will be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper Party, at the following addresses:

Leander:

Capital Metro:

President/CEO
Capital Metropolitan Transportation

Authority
700 Lavaca, Suite 1400
Austin, Texas 78701

With a copy to:

Chief Counsel
Capital Metropolitan Transportation Authority
700 Lavaca, Suite 1400
Austin, Texas 78701

- K. Liability. **THE PARTIES AGREE THAT EACH GOVERNMENTAL ENTITY IS RESPONSIBLE FOR ITS OWN PROPORTIONATE SHARE OF ANY LIABILITY FOR THE NEGLIGENT ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS ARISING OUT OF, CONNECTED WITH, OR AS A CONSEQUENCE OF ITS PERFORMANCE UNDER THIS AGREEMENT.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS, OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, TORT OR OTHER ACTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

- L. Administrative Approval. Leander's duly authorized representative and the Capital Metro President & CEO will have the authority to negotiate and execute amendments to this Agreement without further action or action from their respective governing bodies, but only to the extent necessary to implement and further the clear intent of the respective governing bodies' approval, and not in such a way as would constitute a substantive modification of the terms and conditions hereof or otherwise violate Chapter 791 of the Texas Government Code. Any amendments that would constitute a substantive modification to the Agreement must be approved by the governing bodies of the Parties.
- M. Government Immunity. By execution of this Agreement, neither Party waives nor relinquishes any immunity rights available to it by law except as otherwise stipulated by applicable laws.

V. Signatories

This Agreement is hereby accepted and agreed to by the following individuals or officers who are duly authorized to bind the Parties as set forth above:

**Capital Metropolitan
Transportation Authority**

By: _____

By: _____

Catherine Walker

Printed Name: _____

EVP, Chief Financial & Risk Officer

Title: _____

Date: _____

Date: _____

EXHIBIT A

THE BUILD CENTRAL TEXAS - SUBURBAN COMMUNITIES PROGRAM PROCEDURES AND GUIDELINES

The Build Central Texas – Suburban Communities Program was established by Capital Metro to finance transportation projects that are of mutual benefit to Capital Metro and the respective communities in the Capital Metro service area. The Capital Metro Board of Directors created the Suburban Communities Program to ensure that the suburban cities and portions of counties in the Capital Metro service area (collectively, the “Suburban Communities”) benefit from the Build Central Texas Program.

The following procedures and guidelines are provided to assist the Suburban Communities in Capital Metro's service area with developing and administering their annual Build Central Texas Program - Suburban Communities Program project proposals. Capital Metro staff will be available to assist with any questions that may arise regarding the program.

Project Criteria

1. The purpose of a project must be for transit related capital improvements and generally will fall into one of the following categories, unless otherwise agreed to by Capital Metro:
 - a. Transit Capital Improvements:
 - i. Includes sidewalks, sidewalk curb ramps, safety signage, electronic pedestrian signals, walkway lighting and hike and bike facilities, passenger amenities such as shelters, benches, landscaping, bus stop lighting, concrete bus pads, and roadway improvements that improve traffic safety or traffic flows.
 - ii. Must be along a transit route or directly leading to a transit route or transit facility, unless otherwise approved by Capital Metro. A statement from the Suburban Community that the project is along or directly leading to a transit route must be included in the proposed project list when submitted to Capital Metro.
 - b. Street Resurfacing and Improvements:
 - i. Includes asphalt and concrete resurfacing of streets, street reconstruction, and construction of new streets which will serve as transit corridors. Street repair and maintenance should focus on current and future transit routes. Street projects may only include non-transit related roadways when all transit roadways are in an improved condition.
 - ii. Transit street projects are given priority for resurfacing over non-transit streets. Funding may be applied to the repair of non-transit streets provided all of a Suburban Community's transit streets have been resurfaced in the last five years and are in good condition, as determined by Capital Metro staff. Written verification of such resurfacing must be submitted.

c. Mobility Improvements:

- i. Includes planning, review, and implementation of programs and projects which have a benefit to transit service and include the planning for, review of, and implementation of intersection improvements, signal timing changes, widening of roadways, signage, lighting, transit-related bicycle and pedestrian improvements, and other mobility enhancement projects and programs. Transit-related bicycle and pedestrian improvements are defined as those projects which use various transportation methods to providing multi-modal access to homes, business, public facilities and which provide improved access to transit facilities or service.
2. Strong preference is given to projects that are directly on a transit route.
3. Strong preference is given to projects that directly improve transit service, traffic safety, or passenger convenience.
4. Joint funding of projects between Capital Metro, the Suburban Community, and other financing sources is encouraged.

Project Submittal

1. When Capital Metro staff notifies the Suburban Community of a fiscal year allocation, the Suburban Community shall submit to Capital Metro a proposed project list for that fiscal year (October 1-September 30). The proposed project list must be submitted on or before March 31 of each fiscal year that funds are allocated provided the project list does not exceed the fiscal year allocation. The project list shall define the scope of work for the services to be provided by Suburban Community.
2. Upon request, Suburban Community may be required to submit to Capital Metro additional project details and timelines. Capital Metro has the right to reject any submitted project that does not meet the established Project Criteria. Any project not rejected by Capital Metro shall be deemed approved.
3. The Suburban Community's projects list must include all new projects as well as any previously approved unfinished projects and their status. Capital Metro will review the proposed projects and provide guidance to the respective Suburban Communities as applicable. Final project proposals should be in letter form and directed to Capital Metro at the following address:

Capital Metropolitan Transportation Authority

Attn: Finance

2910 East Fifth Street

Austin, Texas 78702

4. Projects that are not competitively contracted will only be reimbursed for directly related costs. No indirect costs will be covered. It is a requirement under this Agreement that the Suburban Community will so state in their submitted projects list that all projects will be competitively bid noting any exceptions for emergency projects. Direct costs that are covered include the categories of project development, project design, and project construction. A letter or agreement detailing eligible costs will be required for projects that are not competitively contracted before final payment is released. Notwithstanding the foregoing, emergency projects deemed by the Suburban Community to be of grave

public necessity and necessary to meet unusual and unforeseen conditions are exempt from the competitive contracting requirement.

5. In order to advance efforts by Capital Metro and the Suburban Community to increase the participation of small businesses in publicly funded projects, Small Business Enterprise (“SBE”) participation is strongly encouraged. Each Suburban Community may set SBE goals on procurements using its own “Small Business Program” or the Suburban Community may follow Capital Metro’s SBE program.
6. If a project list for any fiscal year that funds are allocated is not submitted to Capital Metro by the end of the calendar year in which funds are allocated, then such fiscal year funds are forfeited.
7. Requests for modifications to project lists or any substitution of the projects previously approved must be submitted in writing to Capital Metro. Written approval by Capital Metro of proposed changes is required.

Project Administration

Throughout the term of any project, Suburban Community will:

1. Maintain regular communication with Capital Metro.
2. If requested, provide Capital Metro with all requested documentation needed to conduct a project audit. In the event Capital Metro determines that fiscal year funds were not spent on an approved project, then upon demand, the Suburban Community shall reimburse Capital Metro for any funds identified by in such audit as not spent on an approved project.
3. Ensure all pedestrian projects and policies developed through the BCT Program are developed in accordance with the requirements of the Americans with Disabilities Act.
4. Notify Capital Metro or its representative when the project is complete or substantially completed.
5. Upon request, arrange a site visit to allow Capital Metro or its representative an opportunity to inspect a project.

Invoicing and Payment

1. The Suburban Community is responsible for invoicing Capital Metro upon completion or substantial completion of the project in accordance with the terms of the Agreement. The invoices should be in letter form to Capital Metro and have attached photocopies of any documentation pertaining to the cost of the project such as construction contracts, supply invoices, timesheets, change orders, contractor pay vouchers, etc.
2. The Suburban Community shall provide Capital Metro with any documentation pertaining to any approved project, including pre-construction or construction meeting minutes, copies of pay applications, change orders, progress reports, photographs, payment vouchers, and project close-out documents if requested by Capital Metro.
3. The Suburban Community is responsible for informing Capital Metro in a timely manner of any substantial delays or alterations in the project scope of work.
4. Capital Metro shall make payments to the Suburban Community, under this Agreement, as

follows: a check for fifty percent (50%) of each fiscal year allocation under this Agreement shall be mailed to the Suburban Community upon submittal of an approved project list for the fiscal year in which funds are allocated and an invoice on the Communities' letterhead. A check for the remaining fifty percent (50%) of the allocated amount for any fiscal year shall be mailed to the Suburban Community upon submission of an invoice from the Suburban Community, together with satisfactory documentation of completion of all approved projects for which funds have been allocated. Capital Metro shall pay all invoices in accordance with Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

5. Capital Metro shall pay all invoices from revenue that is currently available to Capital Metro.
6. Payments to Suburban Community are expressly contingent upon Suburban Community's strict compliance with this Agreement, including the BCT Guidelines and Procedures.
7. All interest that may accrue to program funding held by the Suburban Community must be allocated toward program projects. The local Suburban Community administrator will propose the projects to which the funding will be allocated and submit in writing a project modification request to Capital Metro.