

**INTERLOCAL AGREEMENT BETWEEN
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AND
TRAVIS COUNTY
FOR TRANSIT SERVICES IN URBANIZED AREAS
IN UNINCORPORATED AREAS OF THE COUNTY
AND
FOR IMPLEMENTATION OF THE
TRAVIS COUNTY TRANSIT DEVELOPMENT PLAN**

This Interlocal Agreement between Capital Metropolitan Transportation Authority and Travis County for transit services in urbanized unincorporated areas of the County and for Implementation of the Travis County Transit Development Plan (“**Agreement**”) is made and entered into by and between Capital Metropolitan Transportation Authority (“**Capital Metro**”) and Travis County, a political subdivision of the State of Texas (“**Travis County**”). Capital Metro and Travis County are referred to in this Agreement collectively as the “Parties” and independently as a “Party”.

I. Contracting Parties:

The Receiving Agency: Travis County (“Travis County”)
P.O. Box 1748
Austin, TX 78767

The Performing Agency: Capital Metropolitan Transportation Authority
 (“Capital Metro”)
2910 E. 5th Street
Austin, TX 78702

II. Recitals:

- a. Capital Metro is a local government entity responsible for providing mass transit service within the City of Austin, and the surrounding communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, and Point Venture, as well as the unincorporated area of Travis County within Commissioner Precinct 2 (boundaries as of date of agreement joining Capital Metro) and the Anderson Mill area of Williamson County.
- b. Texas Transportation Code, Section 451.056, grants Capital Metro the authority to contract with a municipality, county, or other political subdivision to provide public transportation services outside of its service area.

- c. A Service Expansion Policy, approved by Capital Metro's Board of Directors in June 2008, amended in April 2014, and endorsed by the Capital Area Metropolitan Planning Organization (CAMPO) in June 2014, allows Capital Metro to partner with cities and counties that are not currently a part of Capital Metro's service area.
- d. In July 2015, Capital Metro and Travis County entered into an agreement (the "**2015 Agreement**") for Capital Metro to provide service on Route 233 (the Far Northeast Feeder) and Route 237 (the Northeast Feeder) in portions of Travis County not within Capital Metro's service area. The 2015 Agreement terminated on June 30, 2016.
- e. Capital Metro and Travis County subsequently entered into that certain Interlocal Agreement for Capital Metro to provide Northeast Flex Route and Far North Flex Route, dated effective July 1, 2016 (the "**2017 Agreement**") for Capital Metro to continue service. The 2017 Agreement terminated on September 30, 2018.
- f. Capital Metro and Travis County subsequently entered into that certain Interlocal Agreement for Capital Metro to provide Route 233 (Decker/Daffan Ln. also known as Far Northeast Feeder) and Route 237 (the Northeast Feeder) and the implementation of the Travis County Transit Development Plan (the "**2018 Agreement**"). The 2018 Agreement was amended and restated. The 2018 Agreement terminated on September 30, 2021.
- g. The Parties agree that providing transit services in the unincorporated urbanized areas of Travis County facilitates the movement of people, goods, and services in Travis County, and benefits the residents of Travis County, including residents who have low to moderate income and are dependent on transit in order to access basic goods and services.
- h. Travis County desires for Capital Metro to continue to provide transit services in the unincorporated urbanized areas of Travis County, and Capital Metro desires to continue to provide these transit services.
- i. In order to provide a sustainable funding partnership for transit services in the unincorporated urbanized areas of Travis County, Capital Metro and Travis County propose to continue to include the County in accordance with Capital Metro's regional Service Expansion Policy.
- j. In order to access funding for transit services through the Federal Transit Administration's Urbanized Area Formula Funding program established under 49 U.S.C. 5307 ("**Section 5307 Funds**") in accordance with Capital Metro's regional Service Expansion Policy, Travis County, in cooperation with Capital Metro, prepared a Transit

Development Plan (“**TDP**”), which was adopted by Travis County Commissioners Court on July 10, 2018.

- k. The TDP recommends implementation of additional transit service in urbanized unincorporated portions of Travis County that are eligible for Section 5307 Funds.
- l. As used in this Agreement, “**Federal Fiscal Year**” means the period that begins on October 1 of a calendar year and ends on September 30 of the following calendar year.

III. Services: The Parties will work together to perform the following services (collectively, the “**Services**”):

- a. Capital Metro agrees to provide and operate bus services (“**Bus Services**”) for the following bus routes to serve a portion of Travis County not currently a part of Capital Metro’s service area (collectively, the “**Bus Routes**”):
 - 1. Route 233 (Decker/Daffan Ln., also known as Far Northeast Feeder Route);
 - 2. Route 237 (Northeast Feeder Route);
 - 3. Route 271 (Del Valle Feeder);
 - 4. Route 318 (Westgate/Slaughter);
 - 5. Manor Area Pickup; and
 - 6. Hornsby Bend Service Pilot.
- b. The balance of Section 5307 Funds not used for paying the cost of the Services described in Section III.a. above, if any, will be used for paying the costs of the implementation of the following projects identified in the Travis County TDP that are eligible for FTA Section 5307 Funds for Federal Fiscal Year (FY) 2022 (October 1, 2021 – September 30, 2022) (“**TDP Services**”):
 - 1. Capital costs, including planning studies, bus stop amenities, public engagement and other eligible costs for TDP implementation.
 - 2. Additional bus stops, additional bus routes, increased frequency of bus services, route extensions, and other services or programs identified by Travis County in the TDP.
 - 3. Consulting Services from Capital Metro or a consultant to Capital Metro to develop a three-year Transit Development Plan (the “**Updated TDP**”) for Travis County. The Updated TDP will provide practical guidance to Travis County to facilitate future transit service decisions. Capital Metro will collaborate with and include input from Travis County staff with respect to all aspects of developing the Updated TDP.

The final Updated TDP will be submitted to the Travis County Commissioners Court for approval. Travis County will update the Updated TDP annually and projects may be added or modified based on funding availability.

- c. As with all Capital Metro services, passengers accessing the Services will be allowed access to all other fixed routes and rail, provided that they pay the appropriate fares charged by Capital Metro.
- d. Capital Metro may provide the Services through a third-party service provider.
- e. All public relations related to the Services will be coordinated through the Capital Metro Public Information Office.
- f. Capital Metro will monitor ridership on the Services and email ridership reports for each Bus Route to Travis County Transportation and Natural Resources staff on a monthly basis.
- g. Capital Metro and Travis County staff will meet at least quarterly to review performance and coordinate on any modification to the Bus Routes.
- h. Capital Metro will collaborate with Travis County to develop and implement a comprehensive communications and marketing plan for the Hornsby Bend Service Pilot ("Communications and Marketing Plan"). Travis County will work with Capital Metro on marketing and communications efforts as part of delivery and refinement for the Hornsby Bend Service Pilot. Travis County will reimburse Capital Metro up to \$10,000 for the "hard" costs associated with the Communications and Marketing Plan, including, but not limited to, printing and mailing costs. The Parties will mutually agree to the expenditure of such "hard" costs prior to Capital Metro incurring the costs.

IV. Financial Terms:

- a. 5307 Funds. Total Section 5307 Funds allocated for the Services shall not exceed \$237,111 for Federal Fiscal Year 2022.
- b. Local Funds. For Federal Fiscal Year 2022, Travis County will provide local funds in an amount that shall not exceed \$911,854 unless the Travis County Commissioners Court specifically authorizes additional

funding for this Agreement; this not-to-exceed amount is comprised of the following:

1. Travis County will provide a match of 20 percent of the Section 5307 Funds for TDP Services.
2. Travis County will provide a match of 60 percent of the Section 5307 Funds for Bus Services.
3. Subject to the County's total contribution limit of \$911,854 for this Agreement, Travis County will be responsible for 100 percent of the costs for Services after the Section 5307 Funds expenditure balance is exhausted.
4. Travis County will allocate up to \$10,000 for the reimbursement of "hard" costs related to the Communications and Marketing Plan in accordance with Section III.h. of this Agreement.

c. Fare Recovery. Capital Metro will deduct the following amounts from each monthly invoice:

1. For Bus Routes 233 (Decker/Daffan Ln also known as Far Northeast Feeder), 237 (Northeast Feeder), 271 (Del Valle Feeder) and 318 (Westgate/Slaughter), Capital Metro will deduct an amount equal to the product of (i) the total cost of Services for Bus Routes 233 (Decker/Daffan Ln also known as Far Northeast Feeder), 237 (Northeast Feeder), 271 (Del Valle Feeder) and 318 (Westgate/Slaughter) provided by Capital Metro under this Agreement for the invoiced month and (ii) Capital Metro's actual fare recovery percentage for the invoiced month. The monthly Capital Metro fare recovery percentage will be calculated by dividing (i) the total amount of actual fares collected for all transit services provided by Capital Metro in the invoiced month by (ii) the total amount of Capital Metro's operation costs for the invoiced month.
2. For the Hornsby Bend Service Pilot, Capital Metro will deduct from each monthly invoice an amount equal to the product of (i) the total numbers of customers utilizing the Hornsby Bend Service Pilot for the invoiced month and (ii) the revenue collected by Capital Metro for each such customer. As of the Effective Date of the Agreement, Capital Metro collects \$0.52 in revenue per customer, but such amount is subject to change based on various factors, including fare adjustments. Capital Metro will provide written notification to Travis County of any such change, including the reasons for the change and the effective date of the change.

3. For the Manor Area Pickup, Capital Metro will deduct from each monthly invoice an amount equal to the product of (i) one-quarter (1/4) of the total numbers of customers utilizing the Manor Area Pickup for the invoiced month and (ii) the revenue collected by Capital Metro for each such customer. As of the Effective Date of the Agreement, Capital Metro collects \$0.52 in revenue per customer, but such amount is subject to change based on various factors, including fare adjustments. Capital Metro will provide written notification to Travis County of any such change, including the reasons for the change and the effective date of the change.
- d. Capital Metro will submit a “correct and complete” monthly invoice as described in Section IV.e. to Travis County for the Services performed in the previous month in an amount equal to any costs incurred by Capital Metro for the Services performed that exceed the eligible Section 5307 Funds available for those Services, less the fare recovery amounts set forth in Section IV.c above. Travis County will make payments under this Agreement in accordance with the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code).
- e. In order to be considered “correct and complete,” an invoice must include at least the following information:
 1. Name, address, and telephone number of Capital Metro and similar information in the event payment is to be made to a different address,
 2. The name of this Agreement,
 3. Identification of items or Services as outlined in the Agreement, and
 4. Any additional payment information which may be called for by this Agreement or that is required by the Travis County Auditor’s Office.
- f. Each invoice must be submitted to the following address:

Travis County Transportation and Natural Resources Department
Attention: Financial Services
P.O. Box 1748
Austin, Texas 78767
- g. No other charges, expenses, contributions, recoupments, or charge backs shall be due from or paid by Travis County in the performance of this Agreement. Notwithstanding any provision to the contrary, Travis County

will not pay for any Services until after the Services have been satisfactorily provided and Travis County has received a correct and complete invoice.

- h. Travis County is responsible for tracking invoices and the Section 5307 Funds expenditure balance. Travis County and Capital Metro will meet quarterly to review invoices and the Section 5307 Funds expenditure balance.

V. Term of the Agreement:

This Agreement shall take effect on October 1, 2021 ("**Effective Date**") and terminates September 30, 2022.

VI. Default:

A Party shall be in default under this Agreement if that Party fails to fully, timely and faithfully perform any of its material obligations under the Agreement.

VII. Miscellaneous:

a. Cooperation

The Parties will reasonably cooperate with the other in furtherance of the objectives of this Agreement.

b. Force Majeure

In the event that the performance by a Party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, pandemic, or the act or conduct of any person or persons not a party or privy hereto, then the Party shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.

c. Notice

Any notice given hereunder by either Party to the other shall 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:

RECEIVING PARTY: The Honorable Andy Brown (or his successor)
Travis County Judge
P.O. Box 1748
Austin, TX 78767
Attn: Travis County Judge

WITH A COPY TO: Cynthia McDonald (or her successor)
Transportation and Natural Resources County
Executive
P.O. Box 1748
Austin, TX 78767

Delia Garza (or her successor)
Travis County Attorney
P.O. Box 1748
Austin, TX 78767
Attention: File Number 356.398

AND TO: Bonnie S. Floyd, MBA, CPPO, CPPB (or her
successor)
Travis County Purchasing Agent
P.O. Box 1748
Austin, TX 78767

PERFORMING PARTY: Randy Clarke (or his successor)
President & CEO
Capital Metropolitan Transportation Authority
700 Lavaca St.
Austin, TX 78701

WITH A COPY TO: Chief Counsel
Capital Metropolitan Transportation Authority
700 Lavaca St.
Austin, TX 78701

d. Entire Agreement

The recitals set forth above are incorporated herein. This Agreement contains 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. The recitals set forth above are incorporated herein.

e. Modification

This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties. No official, representative, agent, or employee of Capital Metro, has any authority to modify this Agreement, except pursuant to such express authority as may be granted by Capital Metro's Board of Directors or as otherwise provided in this Agreement. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas.

Notwithstanding the foregoing, Capital Metro's President & CEO will have the authority to negotiate and execute amendments to this Agreement on behalf of Capital Metro without further action from the Capital Metro Board of Directors, but only to the extent necessary to implement and further the clear intent of the Capital Metro Board of Directors' 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.

f. Invalid Provision

Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

g. Inspection of Books and Records

- (1) The Parties agree to maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and to make such materials available to each other, and their duly authorized representatives, for review, inspection, and reproduction at their respective office during the period that this Agreement is in effect and for four years after the Agreement is terminated or until any impending litigation or claims are resolved, whichever is later.
- (2) Capital Metro and Travis County and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions except that nothing in this Agreement requires Capital Metro or Travis County to waive any applicable

exceptions to disclosure under the Texas Public Information Act.

h. Current Funds

The Party or Parties paying for the performance or governmental functions or services shall make payments therefor from current revenues available to the paying party.

i. Venue

TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.

j. Interpretation

In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either Party.

k. Application of Law

This Agreement is governed by the laws of the State of Texas.

l. Mediation

If mediation is acceptable to both Parties in resolving a dispute arising under this Agreement, the Parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both Parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both Parties agree, in writing, to waive the confidentiality.

m. Third Party Rights Not Created

This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it and the Parties are not waiving any defense or immunity to which they

are entitled against any person or legal entity that is not a Party to this Agreement.

n. Counterparts

This Agreement may be executed in separate counterparts, each of which is to be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Signatures transmitted electronically by e-mail in a "PDF" format or by DocuSign or similar e-signature service shall have the same force and effect as original signatures in this Agreement.

o. Sovereign Immunity

By execution of this Agreement, neither Party waives or relinquishes any sovereign immunity rights available to it by law except as otherwise stipulated by applicable laws.

p. Contract Authority

This Agreement is entered into between the Parties shown below pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

q. Taxpayer Identification

Capital Metro shall provide Travis County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Code and its rules and regulations before any funds are payable.

r. Survival

Conditions and covenants of this Agreement which by their terms are performable after the termination, expiration, or end of this Agreement shall survive such termination, expiration, or end and remain fully performable.

Each of the signatories to this Agreement represents and warrants that he or she is duly authorized to sign this in the capacity indicated to be effective as of the Effective Date.

PERFORMING AGENCY
Capital Metropolitan Transportation Authority

By: _____
Sharmila Mukherjee
Executive Vice President
Strategic Planning and Development

Signature Date: _____

Approved as to Form

By: _____
CMTA Legal Department

RECEIVING AGENCY
Travis County, Texas

By: _____
Andy Brown
County Judge

Signature Date: _____