

INTERLOCAL COOPERATION AGREEMENT

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2
3 This Interlocal Cooperation Agreement (“Agreement”) is between the following three political
4 subdivisions of the State of Texas: Hays County (“Hays County”), Travis County (“Travis
5 County”), and the Central Texas Regional Mobility Authority (the “Authority”). Hays County,
6 Travis County, and the Authority may be referred to collectively in this Agreement as the
7 “parties,” and individually as a “party.”
8

9 WHEREAS, by Minute Order 83158 enacted on May 22, 1985, the Texas Transportation
10 Commission recognized a need for an expansion of the state highway system to deal with
11 expected traffic growth in Travis County, and designated a state highway now known as State
12 Highway 45 (“SH 45”) to be developed in segments according to need and available funding,
13 and in July of that year the Travis County Commissioners Court accepted Minute Order 83158
14 by resolution; and
15

16 WHEREAS, the Capital Area Metropolitan Planning Organization (“CAMPO”) has included a
17 portion of SH 45 known as SH 45 Southwest (“SH 45 SW”) in the CAMPO Regional
18 Transportation Plans adopted in 1994, 2000, 2005, and 2010; and
19

20 WHEREAS, Hays County and Travis County have acquired the right-of-way needed to build and
21 operate SH 45 SW, and that right-of-way is currently held by the State of Texas; and
22

23 WHEREAS, many residents of Hays County travel north on FM 1626 and on Brodie Lane
24 through the Shady Hollow neighborhood to reach Loop 1 (“MoPac”) at Slaughter Lane for
25 access to employment, retail, and recreational destinations in Travis County, and those Hays
26 County residents as well as local travelers suffer congestion, delays, and safety concerns on
27 Brodie Lane which should be relieved by SH 45 SW; and
28

29 WHEREAS, in June, 2013, the Texas Department of Transportation (“TXDOT”) initiated and is
30 currently leading an environmental study for the area between MoPac and FM 1626 that is
31 planned for SH 45 SW, with a completion date anticipated in early 2015 for the resulting state
32 environmental impact statement (the “state EIS”); and
33

34 WHEREAS, subject to the state EIS, the Authority proposes to design and construct a new four-
35 lane state highway consisting of four tolled main lanes of controlled access roadway, with a
36 possible shared-use path on one side, extending approximately 3.6 miles from MoPac to FM
37 1626, as supported by the October 22, 2013, resolution of the Travis County Commissioners
38 Court (the “Project”); and
39

40 WHEREAS, the parties anticipate and intend that all costs incurred by the Authority to complete
41 the Project will be paid from funds provided by Travis County, Hays County, and TXDOT; and
42

43 WHEREAS, together with TXDOT, Travis County and Hays County have agreed to fund not-to-
44 exceed portions of the costs of the Project as detailed in this Agreement, and the Authority has
45 agreed to manage the design, procurement, and construction of the Project as detailed in this
46 Agreement; and

1
2 WHEREAS, the parties, as political subdivisions of the State of Texas, intend for this Agreement
3 to conform in all respects with the provisions of the Interlocal Cooperation Act, Texas
4 Government Code Section 791.001, et seq.;

5
6 NOW, THEREFORE, the parties agree as follows:
7

8 **1. FINANCIAL OBLIGATIONS.**

9 (A) Hays County shall provide funding for the Project in the total amount not-to-exceed Five
10 Million and no/100 Dollars (\$5,000,000.00 USD). Of that not-to-exceed amount, Five Hundred
11 Thousand and no/100 Dollars (\$500,000.00 USD) shall be paid to the Authority by June 30,
12 2014. The remaining Four Million, Five Hundred Thousand and no/100 Dollars (\$4,500,000.00
13 USD) shall be paid to the Authority no later than twenty (20) days after the date the Authority
14 provides written notice to Hays County and Travis County that the Authority intends to issue the
15 bid solicitation for construction of the Project no later than forty (40) days after the date of that
16 notice.
17

18 (B) Travis County shall provide funding for the Project in a total amount not-to-exceed
19 Fifteen Million and no/100 Dollars (\$15,000,000.00 USD). An initial payment of Two Million,
20 Five Hundred Thousand and no/100 Dollars (\$2,500,000 USD) will be paid by June 30, 2014.
21 The remaining Twelve Million Five Hundred Thousand and no/100 Dollars (\$12,500,000.00
22 USD) shall be paid to the Authority by October 30, 2014.
23

24 (C) The Authority's contribution to Project costs are certain in-kind services provided by
25 staff of the Authority under this Agreement. The parties contemplate additional contributions of
26 funds sufficient to complete the Project from TXDOT. All monies paid by Travis County and
27 Hays County shall be held in trust and utilized by the Authority only in furtherance of this
28 Agreement. Monies spent to pay Project costs incurred to develop and construct the Project as
29 identified by the Budget, or to reimburse any Project costs previously paid by the Authority from
30 other funds, shall be considered expenditures in furtherance of this Agreement.
31

32 (D) The Authority will develop and provide to Travis County and Hays County a detailed
33 budget for estimated cost of completing the Project, and will include a cash disbursement
34 projection for those costs (the "Budget"). The Budget will include the following costs to be paid
35 by the Authority to outside consultants, vendors, and the successful bidder on the construction
36 contract for the Project:
37

- 38 (i) pre-development engineering;
- 39 (ii) preliminary engineering;
- 40 (iii) capital costs (design and construction);
- 41 (iv) engineering oversight (including design reviews, construction management, materials
42 testing, inspection);
- 43
- 44
- 45
- 46

- 1 (v) legal (including any costs of litigation), administrative, and other fees and expenses
2 related to this Agreement, procurement, and Project development and oversight;
3
- 4 (vi) environmental approvals, if required;
5
- 6 (vii) public notices and involvement activities;
7
- 8 (viii) utility relocations;
9
- 10 (ix) contingencies, including change orders that may occur during the course of the Project
11 and possible contractor claims at the end of the Project; and
12
- 13 (x) all other costs reasonably projected as necessary to complete the Project, excluding the
14 cost of the Authority's in-kind services provided through an employee of the Authority.
15

16 (E) All funds paid to the Authority by each County shall be deposited and held by the
17 Authority in separate, interest-bearing trust accounts for the payment of Project costs (the "Trust
18 Accounts"). Interest earned on any accumulated cash balances in the Trust Accounts shall be
19 deposited monthly into the Trust Accounts and shall accrue to the benefit of the respective
20 County's Trust Account. Interest may be used for the payment of Project costs if the Project is
21 constructed, but must be returned to the County along with the unspent principal funds, if the
22 Project is not substantially complete by June 30, 2024.
23

24 (F) The Authority may disburse funds from the Trust Accounts in accordance with the
25 Budget to pay its outside contractors and to pay the contract price for construction of the Project
26 to the bidder selected for the contract. No later than two (2) days after making any disbursement
27 from the Trust Accounts, the Authority will provide to each County a copy of the disbursement,
28 together with sufficient information to establish that the disbursement complies with this
29 Agreement.
30

31 (G) The Authority shall keep and maintain records to document and support that each
32 disbursement made by the Authority is for an authorized purpose under this Agreement. All
33 funds received and/or expenditures made by the Authority related to development and
34 construction of the Project shall be subject to review by the Hays County and/or Travis County,
35 at the requesting County's sole expense.
36

37 (H) The Authority recognizes that Travis County will use State Highway Bonds to fund its
38 contribution payments.
39

40 **2. PROJECT DEVELOPMENT.**

41 (A) The State of Texas owns all necessary right-of-way for the Project. The Authority will
42 arrange with TXDOT for use of the right-of-way.
43

44 (B) Subject to the state EIS, the Authority's design, plans, and specifications for the Project
45 shall comply with design and construction, materials testing, and inspection standards
46 established or followed by TXDOT and the Authority, including but not limited to those for

1 stormwater management, unless otherwise agreed by the parties by amending this Agreement
2 (the “Standards”).
3

4 (C) The Authority will manage the design and construction of the Project pursuant to the
5 Standards, including (i) preliminary estimates, (ii) development of the engineering design, plans
6 and specifications for all roadway improvements, (iii) surveying, (iv) construction, and (v)
7 inspection and testing.
8

9 (D) TXDOT, in coordination with the Authority and appropriate regulatory agencies, is
10 responsible for producing the documents and analysis required for any required permitting and
11 environmental documentation and clearances associated with the Project. The Authority in
12 coordination with TXDOT shall apply for and obtain any permits and other required clearances
13 issued by a state or local government agency other than the County.
14

15 **3. PROJECT MANAGEMENT.**

16 (A) The Authority’s Director of Engineering (the “Authority Representative”) will act on
17 behalf of the Authority with respect to the Project. The Authority Representative will coordinate
18 with each County as necessary, receive and transmit information and instructions, and will have
19 complete authority to interpret and define the Authority’s policies and decisions with respect to
20 the Project in accordance with this Agreement. The Authority will designate a Project Manager
21 and may designate other representatives to transmit instructions and act on behalf of the
22 Authority with respect to the Project.
23

24 (B) The Commissioners Court of Travis County and of Hays County shall each appoint a
25 person (the “County Representative”) to act on behalf of each County with respect to the Project
26 in accordance with this Agreement; to coordinate with the Authority as necessary; and to receive
27 and transmit information and instructions under this Agreement. The County Representative will
28 have complete authority to interpret, define, and communicate to the Authority their respective
29 County’s policies, recommendations, and decisions related to the Project in accordance with this
30 Agreement. By written notice delivered under this Agreement, the County Representative may
31 designate a County Project Manager or Co-Managers and may designate other representatives to
32 transmit instructions and act on behalf of their respective Counties related to the Project.
33

34 (C) County development permits are required for the Project in both Travis and Hays
35 Counties. Travis County and Hays County hereby waive all County fees in connection with
36 construction of the Project.
37

38 (D) The Authority shall notify Travis County and Hays County in writing upon substantial
39 completion of the Project.
40

41 (E) Upon the earlier of: (i) 30 days after the Authority has applied and expended in
42 accordance with this Agreement all funds paid to the Authority by either County, plus accrued
43 interest thereon; or (ii) 30 days after final acceptance of the Project construction by the
44 Authority, the Authority shall render a final written accounting to that County of any and all
45 costs paid, to be paid, credited, or refunded to or from that County’s Trust Account established
46 under this Agreement, taking into account amounts that County has paid into the Trust Account

1 as provided herein. Each County shall have the right to audit the Authority's records at its
2 expense, and shall request any such audit, or any adjustments or corrections, no later than ninety
3 (90) days after its receipt of the accounting. The Authority shall refund any amounts due to a
4 County no later than twenty (20) days after delivery of the adjusted final accounting.

5
6 **4. DISPUTE RESOLUTION**

7 (A) Negotiation. The parties will attempt in good faith to resolve promptly through
8 negotiation any claim or controversy arising out of or relating to this Agreement. If a controversy
9 or claim should arise, the parties agree to each select a Representative and to have those
10 Representatives meet at least once to attempt in good faith to resolve the dispute. For such
11 purpose, any party may request the others to meet within ten (10) days, at a mutually-agreed-
12 upon time and place. The parties shall, within ten (10) days after the Effective Date of this
13 Contract, each designate to the other their respective Representatives, who shall be an executive-
14 level individual with authority to settle disputes. Each of the parties may change the designation
15 of its Representative, but shall maintain at all times during the term of this Contract a designated
16 Representative and shall ensure that the other parties are notified of any change in the
17 designation of its Representative.

18
19 (B) Mediation. If the dispute has not been resolved within sixty (60) days after the first
20 meeting of the designated Representatives (or such longer period of time as may be mutually
21 agreed upon), any of the parties may refer the claim or controversy to non-binding mediation
22 conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to
23 the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written
24 mediation request to the other parties. In the event that such a request is made, the parties agree
25 to participate in the mediation process. The parties and the Mediator may join in the mediation
26 any other party necessary for a mutually-acceptable resolution of the dispute. Should the
27 Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor
28 Mediator. The mediation procedure shall be determined by the Mediator in consultation with the
29 parties. The fees and expenses of the Mediator shall be borne equally by the parties. Unless the
30 parties are satisfied with the result of the mediation, the mediation will not constitute a final and
31 binding resolution of the dispute. All communications within the scope of the mediation must
32 remain confidential as described in *Tex. Civ. Prac. and Rem Code* §154.073, unless the parties
33 agree, in writing, to waive the confidentiality.

34
35 **5. DEFAULT; REMEDIES; TERMINATION.**

36 (A) A party may terminate this Agreement if any other party defaults in its obligation and,
37 after receiving notice of the default and of the non-defaulting party's intent to terminate, fails to
38 cure the default no later than fourteen (14) days after receipt of that notice.

39
40 (B) This Agreement will terminate on the later of: (i) thirty-one (31) days following the
41 Counties' receipt from the Authority of final written accountings under subsection 3(D), if the
42 Counties did not timely request an audit of the Trust Account under that subsection, or (ii) if
43 either County requests an audit under subsection 3(E), the date the Authority and that County
44 have resolved all disputes, if any, concerning the expenditure of funds paid by that County into
45 its Trust Account in accordance with the terms of this Agreement.

1 **6. MISCELLANEOUS.**

2 (A) Force Majeure. Whenever a period of time is prescribed by this Agreement for action to
3 be taken by either party, the party shall not be liable or responsible for, and there shall be
4 excluded from the computation of any such period of time, any delays due to strikes, riots, acts
5 of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws,
6 regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the
7 control of such party.

8
9 (B) Notice. All notices, demands or other requests, and other communications required or
10 permitted under this Agreement or which any party may desire to give, shall be in writing and
11 shall be deemed to have been given on the sooner to occur of (i) receipt by the party to whom the
12 notice is hand-delivered, with a written receipt of notice provided by the receiving party, or (ii)
13 or (ii) receipt of a facsimile or electronic mail transmission (the latter of scanned documents in
14 formats such as .pdf or .tif) for which confirmation of receipt by the other party has been
15 obtained by the sending party:

16
17 **AUTHORITY:** Wesley M. Burford, Director of Engineering
18 Central Texas Regional Mobility Authority
19 3300 N. IH-35, Suite 300
20 Austin, TX 78705
21 (512) 966-9784 (facsimile)
22 Email address: wburford@ctrma.org

23
24 **WITH COPY TO:** Andrew Martin, General Counsel
25 Central Texas Regional Mobility Authority
26 3300 N. IH-35, Suite 300
27 Austin, TX 78705
28 (512) 225-7788 (facsimile)
29 Email address: amartin@ctrma.org

30
31 **HAYS COUNTY:** Mark Jones, Commissioner Precinct 2
32 P.O. Box 1180
33 5458 FM 2770
34 Kyle, TX 78640
35 (512) 268-1250 (facsimile)
36 Email address: mark.jones@co.hays.tx.us

37
38 **WITH A COPY TO:** Mark Kennedy
39 General Counsel for Hays County
40 111 E. San Antonio, Suite 202
41 San Marcos, TX 78666
42 (512) [REDACTED] - [REDACTED] (facsimile)
43 Email address: mark.kennedy@co.hays.tx.us

44
45 **TRAVIS COUNTY:** Steve Manilla, County Executive
46 Travis County Transportation and Natural Resources Department

1 700 Lavaca Street, Suite 700
2 Austin, TX 78767-1748
3 (512) 854-4697 (facsimile)
4 Email address: steven.manilla@co.travis.tx.us
5

6 WITH A COPY TO: John Hille, Director, Transactions Division
7 Travis County Attorney's Office
8 314 West 11th Street, 5th floor
9 Austin, TX 78701
10 (512) 854-4808 (facsimile)
11 Email address: john.hille@co.travis.tx.us
12

13 (C) Calculation of Days. Each reference in this Agreement to a day or days refers to a day
14 that is not a Saturday, Sunday, or a legal holiday observed by either the County or the Authority.
15 If the last day of any period described in this Agreement is a Saturday, Sunday, or such legal
16 holiday, the period is extended to include the next day that is not a Saturday, Sunday, or such
17 legal holiday.
18

19 (D) Entire Agreement. This Agreement supersedes any and all other agreements, either oral
20 or in writing, between the parties hereto with respect to the subject matter thereof and contains
21 all of the covenants and agreements between the Parties with respect to said matter.
22

23 No modification concerning this Contract shall be of any force or effect, excepting a
24 subsequent modification in writing signed by the Party to be charged. NO OFFICIAL,
25 REPRESENTATIVE, AGENT, OR EMPLOYEE OF HAYS COUNTY OR TRAVIS
26 COUNTY HAS ANY AUTHORITY TO MODIFY THIS CONTRACT, EXCEPT AS
27 SPECIFICALLY SET FORTH HEREIN OR PURSUANT TO EXPRESS AUTHORITY
28 TO DO SO GRANTED BY THE COMMISSIONERS COURT OF HAYS COUNTY,
29 TEXAS, AND TRAVIS COUNTY, TEXAS, RESPECTIVELY.
30

31 (E) Modification; Waiver. No amendment of this Agreement will be effective unless it is in
32 writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply
33 with an obligation under this Agreement will be effective unless it is in writing and signed by the
34 party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other
35 condition or failure to comply with any other obligation.
36

37 (F) Effective Date. This Agreement will become effective when signed by Travis County,
38 Hays County, and the Authority. The date of this Agreement will be the date this Agreement is
39 signed by the last party to sign it, as indicated by the date associated with that party's signature.
40

41 (G) Counterparts. If the parties sign this Agreement in several counterparts, each will be
42 deemed an original but all counterparts together will constitute one instrument.
43

44 (H) Other Instruments. The parties shall execute other and further instruments and documents
45 as may become necessary or convenient to effectuate and carry out the purposes of this
46 Agreement.

1
2 (I) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this
3 Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not
4 impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be
5 confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or
6 ineffective.

7
8 **HAYS COUNTY:**

TRAVIS COUNTY:

9
10
11 _____
12 Bert Cobb, M.D.
13 Hays County Judge
14 Date: March ____, 2014

Samuel T. Biscoe
Travis County Judge
Date: March ____, 2014

15
16
17 **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:**

18
19
20 _____
21 Mike Heiligenstein
22 Executive Director
23 Date: March ____, 2014

