

**Interlocal Agreement for Operations and Maintenance of the  
Combined Emergency Communications  
Facility and Supported Systems**

**STATE OF TEXAS §**

**COUNTY OF TRAVIS §**

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

**RECITALS**

The Parties, consisting of regional public safety and public service agencies, have formed a coalition with a common vision of improved public service through a partnership of performance. This regional coalition has 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 emergency and transportation services by ensuring that the CEC 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 is to provide for the organizational structure and funding supporting operation and maintenance of a regional Combined Emergency Communications and Transportation Management Center(CEC) and the associated Austin/Travis County Emergency Operations Center, Computer Aided Dispatch System, City of Austin Fire and A/TCEMS Records Management System, City of Austin Police Records Management System, Travis County Law Enforcement Records Management System, 9-1-1 System, and a TxDOT Intelligent Transportation System, all or portions of which will be located in the CEC.

To date, the Parties have developed the CEC by providing a site and designing and constructing the CEC.

NOW, THEREFORE, in consideration of the mutual covenants herein, the Parties agree as follows:

## **A G R E E M E N T**

1. **Incorporation of Recitals.** The above Recitals are incorporated herein for all purposes.
  
2. **Term of Agreement.** The term of this Agreement is for forty-nine (49) years in increments of twelve (12) months commencing on the date the last Party executes this Agreement (the "Effective Date"). The first year of this Agreement will be less than twelve (12) months, and will end on August 14, 2002. Subsequently, this Agreement will be automatically renewed for twelve (12) month periods, on August 14th annually, subject to earlier termination as provided below.
  
3. **Definitions**

**Budget** means the applicable portion of the Operating Budget or Capital Budget, except where expressly stated otherwise.

**Capital Metro** means the Capital Metropolitan Transportation Authority.

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

**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.

**Combined Emergency Communications Center (CEC)** means the regional integrated and coordinated combined emergency communications and transportation management center, inclusive of the Facility, structures on and around the Facility on the CEC Site, as well as the Systems on and within the Facility. The Combined Emergency Communications and Transportation Management Center will house the Austin/Travis County Emergency Operations Center and support the operation and maintenance of critical public safety and emergency communications systems for the Austin/Travis County area.

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

**Day**, unless otherwise described, means calendar day.

**Capital Expenses** means expenses required to be budgeted for Capital Costs in excess of \$100,000 in any one budget year, and which may be partially funded in a multi-year Capital Improvement Plan program.

**Costs** are defined below by category and types of costs, as shown on the Implementation Budget Pro Forma, **Exhibit A**, and the Estimated Operation Budget Pro Forma, **Exhibit B**. **Exhibits A and B** can be amended in the manner set out in **Section 8. Budget**.

**Capital Costs** means all costs associated with any additions, repairs, replacement, or upgrades to the Combined Emergency Communications Center and the Systems it supports after initial construction of the CEC or Systems is completed.

**Operating Costs** means all costs incurred to occupy and use the Facility, including without limitation, Commodities Costs, Contractual Costs, Personnel Costs, and System Costs, and further including building system services, utility costs, custodial services, grounds maintenance, security, 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 the useful life of the assets, and reduce the probability of failures. All Operating Costs must be included in each Annual CEC Budget.

**COA CEC Program Management and Administrative Services Costs** means those COA costs associated with providing management and administrative services, which will be reimbursed as if COA were a third-party vendor of those services, and not otherwise included as a Cost herein, (e.g., mail service, IT support, etc.)

**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.

**Personnel Costs** means regular wages, stability pay, insurance, FICA, Medicare, and retirement contributions.

**Systems Costs** means all costs associated with Shared Employee Personnel Costs and related costs to operate or upgrade the Systems, hardware, and software licenses; to provide training, and support; costs associated with maintenance contracts.

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

**Employees** are either “Shared Employees” or “Internal Program Employees” for purposes of this Agreement.

**Internal Program Employees** means those employees employed directly by a Party to support one or more Systems at the CEC Facility, excluding Shared Employees.

**Shared Employees** means those employees employed by COA to support one or more Systems at the CEC Facility and whose salary is funded by contributions from the Parties through the Budget process.

**Facility** means the actual CEC building structure and related site improvements being constructed at 5010 Old Manor Road.

**Exclusive Facilities** means that portion of the Facilities designed for use by only one of the Parties as shown on the attached and incorporated **Exhibit C**.

**Shared Facilities** means that portion of the Facilities designated for common and general use by any Party as shown on **Exhibit C**.

**Partially Shared Facilities** means that portion of the Facilities designated for use by specifically designated Parties as shown on **Exhibit C**.

**Exhibit C** will be amended to change the location and/or proportion of Exclusive and Shared Facilities to reflect the changes if the Parties enter into a sublease under the Lease or amend the Lease, and it becomes effective when all relevant Parties execute the sublease, or all Parties execute the Lease Amendment, whichever is applicable. A color-coded floor plan will be on file in the office of the General Manager [and will be distributed when available].

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

**Office** means the Office of CEC Program set up by the COA City Manager as an office of the City of Austin.

**Remaining Parties** means those Parties to this Agreement who remain committed to this Agreement in the event one or more Parties withdraw. "Parties" is defined on page one of this Agreement.

**Site** means that portion of the land at 5010 Old Manor Rd. being developed for the Combined Emergency Communications and Transportation Center (CEC), 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.

**State of Texas** means the “State Agencies” that are Parties to this Agreement and acting on behalf of the State of Texas, e.g. TxDOT.

**Systems** used individually and in the singular mean each System, and used collectively and in the plural means all Systems defined immediately below and governed by this Agreement. Systems may be added, altered, superseded, or removed from this Agreement by amendment.

**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 that System.

**Regional Trunked Voice Radio System (Radio)** means an 800 MHz regional trunked radio system that will provide total inter-departmental communication capability between all agencies utilizing the new network, portable radio coverage throughout Travis County and surrounding areas, adequate capacity to meet long-term needs for ten years, survivability during adverse weather conditions, and secure communication with limited unauthorized access to sensitive information.

**Computer Aided Dispatch System (CAD)** means a regional system to be used by multiple governmental agencies in Travis County for sharing data. Interfaces with 9-1-1 call taking systems, Travis County Sheriff’s Records Management System, City of Austin Public Safety Records Management Systems, and TxDOT ITS, including all related interfaces resulting in improved situation management during public safety emergencies.

**COA AFD and A/TCEMS Records Management System (COA-AFD RMS)** 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 A/TCEMS Departments.

**COA Police Records Management System (COA-APD RMS)** 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 Computer Aided Dispatch System and accessible to law enforcement agencies of other municipal and governmental entities.

**Travis County Law Enforcement Records Management System (TCLE RMS)** means an incident reporting system which also allows for management of data relating to warrants, investigation, personnel and other business needs specific to the County’s Sheriff’s Office and Constables.

**9-1-1 System (911)** means 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.

**Intelligent Transportation System (TxDOT ITS)** means a system of a number of components, a portion of which is owned and operated by TxDOT, including 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 concerning the transportation system allowing them to make informed decisions to avoid travel delays and integrated with other regional systems.

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

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

**TxDOT** means the Texas Department of Transportation Austin District.

**4. Purpose.** The purpose of this Agreement is to establish an operational and management structure to provide authority to participants for ongoing administration and management of the CEC Program, including establishing an organizational structure and funding process. A Table of Participation that shows which Parties participate in which Systems and their level of participation is attached as **Exhibit D**.

The governance flowchart attached as **Exhibit E** shows the operational and management structure in place on the Effective Date. **Exhibit E** can be amended upon a two-thirds majority vote of the Operating Board, and the amended **Exhibit E** becomes effective upon the date of the vote to amend **Exhibit E**. The Parties have developed suggested objectives and performance measures, attached as **Exhibit F**. The **Exhibit** can be amended by a majority vote of the Operating Board, and the new **Exhibit** will become effective upon the date of the vote to amend **Exhibit F**. The CEC Program will be organized and operate in accordance with all applicable Laws.

## **5. Governing Board.**

**5.A. Purpose.** The Governing Board shall annually approve a draft CEC Budget and recommend approval of the Budget to the governing bodies of the Parties. The Governing Board will also set policy for the CEC Program and assist in the resolution of CEC Program issues.

**5.B. Composition.** The Governing Board will be composed of the COA's City Manager, Travis County's Executive Manager of Justice and Public Safety, Capital Metro's President/CEO, and TxDOT's District Engineer. Three members of the Governing Board constitutes a quorum to conduct business.

**5.C. Secretary.** The General Manager, or designee, shall serve as secretary to the Governing Board.

**5.D. Meeting Requirements.** The Governing Board shall meet at least biannually, but special meetings may be called.

## **6. Operating Board.**

**6.A. Purpose.** The Program will be administered by an Operating Board, which will provide overall CEC Program direction.

**6.B. Composition.** The Operating Board will be comprised of members ("Members"), who will be executive-level management from each of the Parties or their designees, such as department heads, TxDOT District/Division directors, or equivalent, of each Party to this Agreement, or his or her respective designee. Any designee must be at least an assistant or deputy department head level executive, or equivalent, of the designating Party, but must not be officed in the Facility, with the exception of the Travis County and City of Austin Emergency Operations Center executives. The Parties' designated Members and/or designees are shown on the attached **Exhibit G**. Notice of a change in designated Members or designees by a Party may be made by sending written notice of the newly designated Member(s)/designee(s) to the other Parties.

A Party with multiple departments participating in the CEC Program will be entitled to one representative on the Operating Board for each such department, (e.g., COA whose police and fire departments use the respective COA-APD RMS or COA-AFD RMS will be entitled to a representative from each department.) Each Party may appoint a proxy, who may attend all Operating Board meetings, but may only vote in the absence of the regular Member. The

Members may only vote on: dispute resolution proceedings, on matters concerning Systems to which they contribute, and on budget recommendations to the Governing Board and each Party's respective governing body, if applicable. The Members will also review and provide input on policies and procedures. If a Party has multiple representatives, only the representatives utilizing the Systems being affected can vote on any matter affecting those Systems.

**6.C. Duties.** The Operating Board will meet at least quarterly. The Operating Board will examine the apportionment of CEC Program costs between the Parties and recommend any adjustments needed to reflect the beneficial use of the CEC Program by each Party. The Operating Board will annually submit a draft Operating and Capital Program budget to the Governing Board regarding funds needed to maintain, operate, and use the CEC Program. In addition, the Operating Board will provide input into evaluating the performance of the General Manager and will provide input into hiring any new General Manager. The COA's City Manager will give great weight to the Operating Board's evaluation and input, but will retain ultimate hiring and firing responsibility.

**6.D. Terms.** The appointing Party will determine the term of each Member. All Operating Board Members serve at the pleasure of their appointing Party.

**6.E. Attendance Requirements.** Either a Member or proxy must attend all meetings. If a Member and the Member's proxy miss more than 25% of the meetings during any calendar year, the Party must promptly appoint a new Member. The Operating Board will schedule meetings.

**6.F. Chairman, Vice-Chairman, and Secretary.** The Chairman will be elected annually by the Members and may be either a Member or the General Manager. A Vice-Chairman and Secretary will also be elected annually by the Operating Board and shall be Members. The General Manager, who is not a member, will provide the Secretary with staff support to make written minutes of each Operating Board meeting.

**6.G. Procedures at Meetings.** The Chairman or a majority of the Members may call special meetings of the Operating Board. The Chairman will preside at the meetings and the Vice-Chairman will act in the absence of the Chairman. No action may be taken by the Operating Board without a quorum, which consists of a majority plus one of the Members. Any Member may place items on the Operating Board's meeting agenda by submitting the item to the Chairman at least ten calendar days before the next meeting. The Chairman shall submit the



agenda to the Members no later than seven (7) calendar days before the meeting. Each Member shall have one vote. A majority vote of the quorum present at a meeting is required to authorize any action or determination by the Operating Board, except for those actions specified in this Agreement that require a majority vote of all of the members of the Operating Board. If a decision is brought to the Operating Board that affects a System(s) that only some Members contribute to, only those Members that contribute to the System(s) may vote or be counted towards a quorum for purposes of that vote.

**6.H. Actions of Operating Board.** The Operating Board may not take any action that would violate any applicable statute, law, regulation, court order, ordinance, commissioner's court order, Texas Transportation Commission Minute Order, or the articles of incorporation, by-laws, or resolutions of Capital Metro. If any such action is taken, it will be null and void.

**6.I. Emergency Meetings.** The General Manager may call emergency meetings upon 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. Staffing and Operations.**

**7.A. General Manager.** The General Manager shall manage the day-to-day operations of the CEC Program under the direction of the Operating Board. The General Manager will also manage the day-to-day operation of the Facility, the Shared Employees and their support of the Systems. The General Manager will report directly to COA's City Manager or the City Manager's designee. The hiring and separation of the General Manager will be determined by COA's City Manager with input from the Operating Board.

**7.B. Duties of the General Manager.** The General Manager shall:

1. Coordinate Operating Board meetings,
2. Maintain minutes of meetings and CEC Program records,
3. Assure compliance with applicable provisions of the Texas Open Meetings Act, Government Code, Chapter 551,
4. Make recommendations to the Operating Board on the operation and maintenance of the CEC,

5. Supervise the Shared Employees. However, the General Manager will not supervise, manage, or direct any non-COA Party's Internal CEC Program Employees, who shall nonetheless cooperate and coordinate with the General Manager, other Parties Internal CEC Program Employees and the Shared Employees,

6. Provide the first level of administrative dispute resolution as set forth below,

7. Be empowered by the all Parties to this Agreement 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 CEC annual 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 CEC Program or System related Interlocal Agreements, all related plans, specifications, equipment information and warranties, all other related contracts, and Budget documents. (Until a General Manager is appointed, all such documents will be available for review in the office of the Director for RDMT, a division of the COA Financial Services Department),

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 such agreements with Party's non-System departments or divisions, these service level agreements will include, but not be limited to, operating service level agreements between other operating agencies, or departments thereof, which must be agreed to by all involved parties,

11. Provide quarterly service level reports to the applicable Parties, which reports will be used to review services, staff, resource requirements, and cost allocations,

12. Provide quarterly (or upon request by the Operating Board, monthly) budget reports,

13. Provide a quarterly budget reconciliation for the Parties to account for any failure to spend all budgeted proceeds,

14. 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,

15. Call meetings of the Operating Board Members supporting a particular System to facilitate decision-making about that System. (If a consensus can be reached among the affected Members, the General Manager will implement the decision. If no consensus can be reached, the General Manager will refer the matter to the Governing Board and schedule it for action at their next Board meeting or a specially called Governing Board meeting, if necessary),

16. Maintain job descriptions for the Shared Employees in General Manager's office,

17. Provide annual reports targeting the suggested objectives and performance measures shown on **Exhibit F**.

**7.C. Staffing.** COA will provide the Shared Employees to conduct the day-to-day activities for the CEC Program. The Shared Employee job descriptions may be modified by a majority vote of the Members whose Systems are affected by the changed job descriptions. The number and types of employees ("FTE") that will constitute the initial Shared Employee staffing required to operate the CEC Program are set out in attached **Exhibit H**, which may be amended annually to provide for any changes in the numbers and types of FTEs shown in the Budget, in the same manner as **Exhibit B** is amended. *See Section 8. Budget.* The amended **Exhibit H** will be effective in the same manner as **Exhibit B** is effective. The total costs of the Shared Employees will be included in each year's COA Budget and the COA will be reimbursed for a portion of the cost of the Shared Employees by the other Parties in accordance with the CEC Budget.

**7.D. Operating Procedures.** The General Manager shall prepare 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 will submit Standard Operating Procedures to the Operating Board for review and approval. The General Manager and the Operating Board will periodically review the Standard Operating

Procedures and recommend any reasonably necessary changes for approval. The General Manager will also monitor 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 COA, then the personnel practices and policies of COA control as they impact Shared Employees.

## **8. Budget.**

**8.A. Annual Operating Budget.** The General Manager shall prepare an annual pro forma CEC Program operating budget (“Operating Budget”) on a calendar year basis for review and approval as to form by the Governing Board. The Operating Budget must provide for all Costs associated with operating the Facility and CEC Program, as shown on **Exhibit B**.

**8.B. Annual Capital Improvements Budget.** The General Manager shall prepare an annual pro forma CEC Program capital improvements budget (“Capital Improvements Budget”) on a calendar year basis for review and approval as to form by the Governing Board. While a Capital Improvements Budget will be recommended annually, the planning period for Capital Improvements will be five years.

**8.C. Budget Format.** The FY2003 and FY2004 budget (**Exhibits A and B**) formats are expressly approved by the Parties as to form upon execution of this Agreement. Both the FY2003 and FY 2004 CEC Budgets are subject to the governing body of each Party adopting an FY2003 budget and an FY2004 that includes all of that Party’s CEC Budget Costs and Internal Program Costs.

Each proposed annual Budget must be submitted to the Governing Board during each January beginning in FY 2005. Upon at least a majority vote of all members of the Governing Board, the Budget will be recommended for adoption by each Party’s respective governing body, as applicable.

As the operational budget pro forma is approved by the Parties, the new CEC Budget format will replace **Exhibit B** and will be effective upon approval of the CEC Budget.

**8.D. Budgeted Expenditures.** After the CEC Budget has been approved and funded by the Parties, the COA City Manager is authorized to incur costs and expenses in accordance with the Budget. Any costs or expenses to be incurred in excess of the approved and funded Operating

or Capital Budget amount will require additional CEC Budget approval and funding or re-allocation of existing funds by the Parties.

**8.E. Funding Transfers to COA.** COA will provide timely and accurate invoices to facilitate the transfer of funds by each Party to COA, and the Parties will each comply with certain requirements to facilitate payment by COA to the CEC Program vendors and contractors:

**8.E.1. Notice.** COA must provide at least fifteen (15) calendar days prior written notice (the "Notice") of any amounts due from each Party under an invoice for Budgeted Costs to allow the Parties sufficient time to approve any disbursement of funds, as required by law. The Notice must include a copy of the itemized invoice(s) for services, equipment, or materials and a date on which payment will be made by the COA's City Manager, and which complies with the five (5) day payment and fifteen (15) day notice periods.

**8.E.2. Approval.** Each Party must approve, or dispute, payment of invoices within 10 business days after receipt of the invoice and provide written notice of any dispute to the General Manager or designee.

**8.E.3. Wiring Instructions.** COA must provide wiring instructions to each Party for the electronic transfer of Party funds to their respective Accounts.

**8.E.4. Party Funds.** Each Party must transfer its portion of the CEC Program Costs to its respective Account no later than the sixteenth (16<sup>th</sup>) day after receipt of an invoice from COA.

**8.E.5. Payments.** COA must pay invoices for CEC Program costs, which may include COA CEC Program Management and Administrative Services Costs approved in any adopted CEC Program Budget, within five (5) business days after receipt of the respective Party's funds in their respective Accounts, and otherwise in compliance with the Prompt Payment Act.

**8.E.6. Confirmation of Payments.** COA must provide wire transfer confirmations or copies of cancelled checks to each Party for any disbursements from their respective Accounts, both of which must show date of payment.

**8.E.7. Statements.** COA must provide monthly statements of Account activity, including any interest earned, to each Party's designated representative on or before the sixth (6<sup>th</sup>) business day of each month during this Agreement.

The monthly reports will include beginning and ending balances of funding held by COA for each Party, if applicable. Reports for ‘year-end’ account status will be provided as soon after year-end closeout as possible.

**8.E.8. Account.** COA must provide a separate bank account for each Party (the “Account”) dedicated solely to the administration of that Party’s CEC Program contributions. No money will be invested unless at any Party’s written request to the General Manager, and at that Party’s expense, all funds provided to each account will be invested in the same manner as the City invests its excess funds, and any interest earned on the funds invested will be credited to each account based on the dollar amount in each account and the rate of interest earned on the funds invested. If Capital Costs are budgeted, and each Party requests the investing and accounting services required in this subsection, the duties will be added to an FTE in the next Budget cycle for the duration of the Capital Project, rather than each Party paying the costs of administering the Account.

**8.E.9. Interest.** COA must pay each Party all interest generated on the funds in the respective Party’s Account, if any, within ten (10) business days of a request for payment from the Party’s designated representative.

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

**8.E.11. Party Representatives.** For purposes of this **Section 8.E.**, the Parties Designated Representative for receiving the invoices, statements, and reports and demanding interest earnings are as follows:

COA:	RDMT Financial Consultant
Travis County:	Travis County Wireless Manager
TxDOT:	District Engineer
Capital Metro:	Accounts Payable P.O. Box 6308 Austin, TX 78762-6308

Unless a different address is listed here, notices will be sent to the address listed in **Section 17.E. Notices.**

**8.E.12. Additional Travis County Process.** Further, to the extent the payment process set out above does not include the entire payment process established in the “9-1-1 RDMT Project Payment, Invoicing, and Reporting Agreement”, dated February 15, 2002, COA agrees to follow such additional processes as required by that document with regards to Travis County.

**8.E.13. Alternate Quarterly Payment Process.** Alternatively, the Parties may agree to interim quarterly payments in accordance with the adopted Budget, subject, however, to a quarterly accounting and adjustment of Operating Costs and Capital Costs.

**8.F. State Budget Process.** The State of Texas budgets on a two (2) year basis, therefore, all references in this Agreement to annual budget requirements will automatically mean bi-annual budget requirements for the State Agency Parties to this Agreement. Additionally, any annual Budget date requirements in this Agreement automatically will be construed as bi-annual date requirements for the State Agency Parties’ State Budget.

**8.G. Funding.** The Parties specifically acknowledge that funding for each Party’s share of the CEC Budget has gone through that Party’s normal budgeting process; is current revenue available to each funding Party; and has been approved by its governing body for transfer to COA’s budget for expenditure by the City Manager in accordance with the CEC Budget and COA’s purchasing requirements. The Parties further acknowledge that they will each have their own annual “**Internal Program Costs**” that are separate and in addition to the CEC Budget Costs and that the annual budget that each Party’s governing body adopts will specifically include that Party’s Internal Program Costs, with sufficient additional appropriations over its allocated portion of the CEC Budget to cover those Internal Program Costs in its annual budget.

**8.H. Failure to Fund.** If any Party authorizes funding at less than their allocated amount recommended by the Governing Board, at the sole discretion of the other Parties by majority vote, the CEC Budget either will be adjusted accordingly or the other Parties may agree to pay the unfunded portion. Action on a Budget adjustment or a Party’s(ies’) agreement to pay more must be taken within thirty (30) days after any Party’s governing body adopts or otherwise authorizes expenditures for less than that Party is allocated for a future budget, or that year’s CEC

Budget is automatically reduced by the unfunded allocation. If the CEC 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 8.I.** below.

If any Party fails to provide any funding for its share of the CEC Budget or its Internal Program Costs, such Party will be deemed to have provided its twenty-four (24) month notice of termination of its participation in the CEC Program and this Agreement and the Parties will follow the procedures for termination of a Party set out in **Section 15. Termination.** below.

**8.I. 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:

**8.I.(i)** Amend the CEC Budget and then reduce System services, Operating Board representation, and voting rights to the Underfunding Party with such reductions to be consistent with the Underfunding Party’s continued participation in Systems, if any.

**8.I.(ii)** Reduce the CEC 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.

**8.I.(iii)** 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”). Each Party agrees that its future right to participate in the CEC Program is dependent upon fully funding its share of the Budget and its Internal Program Costs. Therefore, the Underfunding Party shall fund the Assessment, and its entire portion of the next annual Budget in its next budget cycle.

**8.I.(iv)** Amend the CEC Budget by increasing the amounts paid by the other Parties based on a cost-benefit analysis of the CEC Program and Systems value to those Parties with an acknowledgement of the non-quantifiable value to public safety of certain essential CEC Program services with a proportionate increase in Operating Board representation for the Parties commensurate with the additional funding provided.



**8.I.(v)** 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.

**9. Accounting Records.** The General Manager will maintain accounting records in accordance with generally accepted accounting standards, including compliance with federal guidelines for spending federal funds or bond proceeds. Such records will be open to inspection by the Parties during reasonable business hours and will be retained for at least six (6) years.

Upon three (3) days written notice, any Party may audit the records in the Facility.

**10. Contracting Authority.** The Parties specifically agree that the COA City Manager will have the authority to contract on behalf of the Parties for items that have been approved in the annual CEC 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.

**11. Allocation of Costs.** The Parties will pay for the percentages allocated for the Budget shown on **Exhibit B**, as it may be amended. There are several categories of percentages that the Parties will pay, depending on the nature of the Cost. The percentages are shown on and a part of **Exhibit B**, and may be amended in the same manner as **Exhibit B**.

**12. Federal Funds and Bond Funds.** If a Party utilizes Federal funds, grant funds, or bond funds to meet a portion of their financial commitment under this Agreement, the Parties agree to 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 CEC Program expenditures contemplated herein for Federal and/or grant program reimbursement and to avoid arbitrage penalties. Further, the Parties agree to cooperate with each other in the application for and administration of Federal funds, grant funds, or bond funds in order to maximize funding participation in the operation and maintenance of the CEC Program. Each Party intending to utilize 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 CEC Program.

**13. Facility Systems Operation.**

**13.A.** The Parties shall operate those Systems for which they are responsible or mutually agree to their integrated operation with other Systems from the CEC. Each Party will be responsible for the operation of any System that is funded as a part of its Internal Program Costs. The COA shall be responsible for the operation of the Shared Systems.

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

**14. Emergency Management Operations.** The COA and Travis County will locate their Offices of Emergency Management (OEM) in the Combined Emergency Center at their respective costs and will provide funding for their respective OEMs in their annual budgets.

**15. Termination.**

**15.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 and, if it does so, the Terminating Party may continue to participate in the CEC Program and Systems until the Terminating Party’s Effective Termination Date. However, failure of the Terminating Party to provide funding for its portion of the Budget immediately terminates their ability to continue to participate in the CEC Program and Systems until 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.

**15.B. Termination for Cause.** The Parties 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, after a unanimous vote of the non-defaulting Parties by delivery of a written notice of default which

specifies the default under the material provisions of this Agreement and indicates that the default must be cured within thirty (30) days or the Party's interest in this Agreement will automatically terminate. Provided, however, that in the event that the defaulting Party begins to cure such default, the thirty (30) day cure period will be extended as long as the defaulting Party continues to diligently prosecute such a cure to completion. Notwithstanding the immediately preceding sentence, an Assessment under **Section 8.I(iii)** can only be cured on or before the start of the next Budget cycle after an Assessment is made to that Party.

**15.C. Rights of Remaining Parties.** Once the undepreciated value of the Systems in which a Terminating Party participated ("System Value") is determined, the Remaining Parties will consider alternatives, including but not limited to one of the following:

- (i) Finding another governmental entity to assume the System Value;
  - (ii) Dividing the System Value proportionally among the Remaining Parties;
  - (iii) Allowing one Remaining Party to assume the System Value;
  - (iv) 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 above;
- or
- (v) The Remaining Parties will provide for any payment for System Value to the Terminating Party by amendment to this Agreement.

**15.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 8. Budget and Exhibits H and B.**

**15.E. Voting to Exercise Rights under Section 15.D.** The decision to exercise rights granted by **Section 15.C.** above by the Remaining Parties will be made by the Parties. However, the Terminating Party, and all votes allocated to the Terminating Party, will be excluded in determining the votes needed for the Remaining Parties to make a decision.

**15.F. Effect of Termination on Remaining Parties.** A termination by a Party will have no effect on a Remaining Party's rights to participate in the System Value, CEC Program, Facility, or any System other than the specific rights and duties set out in this **Section 15. Termination.**, and the continuing duty of all Remaining Parties to pay their share of Costs as Budgeted.

**15.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 Combined Emergency Center 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 within fifteen (15) business days to the reasonable satisfaction of the COA. 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. The foregoing rights and remedies given to the COA are, and will be 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. Provided, however, the Parties may then elect to continue this Agreement by mutual agreement of the Parties.

**16. Dispute Resolution Process.**

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

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

**16.C.** Timeframes:

(i) **Initial Dispute Hearing.** 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) business days after the General Manager receives the notice, 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 decision to all applicable Parties within five (5) business days after the meeting. If there is a dispute with the General Manager, the notice must be given to the Vice Chair of the Operating Board and the Operating Board will hear the matter and provide a written notice of their decision to all applicable Parties within five (5) business days after the meeting.

(ii) **Initial Appeal.** A Party wishing to appeal the decision of the General Manager or Operating Board, as described above, must make written notice of appeal

within five (5) business days after receipt of the General Manager's or Operating Board's written decision. The appeal will be addressed to the Vice Chairman of the Operating Board or, in the case of an appeal from a decision of the Operating Board, to the Governing Board, as provided below. The Vice Chair must schedule a meeting of the Operating Board within fifteen (15) business days of receipt of the notice and provide a written recommendation to the appropriate Parties within five (5) business days after the hearing. Any appeal of the recommendation of the Operating Board will be to the Governing Board.

(iii) 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 Governing Board within ten (10) business 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, will either schedule a hearing or send the appeal to mediation within twenty-five (25) business days of receipt of the notice of the appeal. Any appeal from the Governing Board's recommendation will be to a mediator as described below.

(iv) Mediation. If Mediation is the method to finalize the administrative appeal process, the Parties participating in mediation will endeavor to agree on the choice of a mediator within five (5) 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 will choose the name of a qualified mediator. Within five (5) days after the participating Parties choose their mediators, those mediators will choose another mediator to hear the appeal. The mediator chosen must schedule mediation within twenty (20) business 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 a dispute with the General Manager, neither the General Manager nor a designee may attend. The General Manager or his/her designee may otherwise participate in the mediation, and will be allowed to attend all joint sessions. The mediator must provide a

written decision to the applicable Parties and the General Manager within fifteen (15) business days after the mediation.

Any appeal of the decision of the mediator will be to an appropriate court of law in Travis County, Texas, and will be a trial de novo.

**17. Miscellaneous.**

**17.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 agrees that in the performance of its respective obligations as set forth 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 agrees that the compensation to be made to the other Parties as set forth in this Agreement is in an amount intended to fairly compensate each performing Party for the services or functions each provides hereunder, and are made from current revenues available to the paying Party.

**17.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 will be 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 Combined Emergency Center.

**17.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 otherwise participating in the Regional Program.

**17.D Relationship of Parties.** The parties acknowledge that they are not an agent, servant, or employee of any other Party, and that each Party is responsible for its own acts and deeds and for those of its agents or employees.

The parties expressly agree that this project is not a joint venture or enterprise. However, if a court should find that the parties are engaged in a joint venture or enterprise, then the responsible Party agrees to pay any liability adjudicated against another Party for acts and deed of the responsible Party, its employees or agents.

**17.E. Retention of Defenses.** The Parties agree that neither this Agreement nor the operation or use of the Combined Emergency Center 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.

**17.F. Notices.** Notices required under this Agreement must be in writing and delivered personally or sent by certified US 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: Travis County  
P. O. Box 1748  
Austin, 78767  
ATTENTION: Ex. Manager Justice and Public Safety  
and County Attorney (File 164.122)

State: Texas Department of Transportation Austin District  
P.O. Drawer 15426  
Austin, Texas 78761-5426  
7901 N. IH 35, Austin, Texas 78753  
ATTENTION: District Engineer

Capital: Capital Metropolitan Transit Authority  
Metro: 2910 E. 5<sup>th</sup> St.  
Austin, Texas 78702  
ATTENTION: President/CEO

All notices so given, must be deemed given on the date so delivered or so deposited in the mail. All Parties may change their address by sending written notice of such change to the other Parties in the manner provided for above. In **Section 8.E.10.** above, each Party's representative may be different than the person listed above, but the address will be the same unless otherwise noted.

**17.G. Assignment.** This Agreement being based upon the special qualifications of each Party, any assignment or other transfer of this Agreement or any part hereof without the express consent in writing of the other Parties is void and has no effect.

**17.H. Entire Agreement.** The entire agreement between the Parties is contained herein 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.

**17.I. Prior Agreements.** This Agreement supersedes any and all prior agreements regarding this subject which may have previously been made.

**17.J. Severability.** If any term or provision of this Agreement is, to any extent, rendered invalid or unenforceable, the remainder of this Agreement is not affected, and each other term and provision of this Agreement remains valid and enforceable to the fullest extent permitted by law.

**17.K. Non-waiver.** Failure of a Party to exercise any right of remedy for a breach or default of any other Party does not waive such right or remedy in the event of a subsequent breach or default.

**17.L. Authority of Signatories.** Each Party represents to all the other Parties that the representative signing this Agreement on any Party's behalf has been duly authorized by the governing body of that Party in compliance with Texas law.

**17.M. Further Assurances.** Each Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

**17.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 – Implementation Budget Pro Forma
- Exhibit B – Estimated Operation Budget Pro Forma
- Exhibit C – Facility, Exclusive Facilities, Shared Facilities
- Exhibit D – Participation Table
- Exhibit E – Governance Flow Chart
- Exhibit F – Suggested Objectives and Performance Measures
- Exhibit G – List of each Party's Designated Members to the Operating Board
- Exhibit H – Required Program FTE Staffing



**17.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 has agreed, as Landowner, to pay for that portion of insurance costs that would otherwise be assessed to TxDOT in the Budget under Contractuals Costs. In the event of a disaster that includes covered losses, which will 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 will pay their **Exhibit D** 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.

**17.P. Occupancy Limits.** Staffing Limits for the Facility are: COA-135 Employees; Travis County-25 Employees; TxDOT-18 Employees; and Cap Metro-8 Employees (“Staffing Limits”). These occupancy limits do not include staff contracted to provide security for, or facilities management services to, the CEC. If any Party has contract employees who are providing services to the Party in support of the Party’s mission at the CEC, those contract employees will be counted as if they were that Party’s internal program employees.

The Staffing Limits applies to Shared Employees or Internal Employees who are housed in the Facility during any one eight (8) hour shift for more than sixty (60) consecutive Days. If any Party exceeds the Staffing Limits then the General Manager will give notice that the Party has thirty (30) days to bring its Staffing Limits into compliance. If the Party does not comply, then the General Manager may initiate a complaint under **Section 16. Alternative Dispute Resolution.**

Staffing Limits do not apply to training and meetings by any Party that are held within the Facility. Provided, however, that each event of training or meetings do not exceed more than fourteen (14) consecutive Days.

**17.Q. Emergency Occupancy Limits.** In the event of an emergency or an alert condition the Staffing Limits in this Agreement are suspended.

**17.R. COA City Manager's Designee.** For purposes of this Agreement, the COA City Manager's Designee will be the General Manager, who will act on behalf of the City Manager, unless the COA City Manager notifies the other Parties to the contrary in writing.

This Agreement has been executed in multiple originals, each having equal force and effect, on behalf of the Parties as follows:

**TEXAS DEPARTMENT OF TRANSPORTATION**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

Date: 9-27-02

By: William C. Garbade P.E.  
William C. Garbade, District Engineer

**TRAVIS COUNTY, TEXAS**

Date: 7-23-02

By: Samuel T. Biscoe  
Samuel T. Biscoe, County Judge

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

Date: 10-4/2002

By: Fred M. Gilliam  
Fred M. Gilliam, President/CEO  
OK  
OK

**CITY OF AUSTIN**

Date: 10/10/02

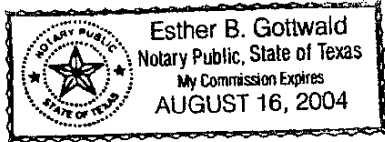
By: Toby Hammett Futrell  
Toby Hammett Futrell, City Manager

Legal form approved on 15 October, 2002

By: Alison Gallaway  
Alison Gallaway, (Assistant City Attorney)

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 27<sup>th</sup> day of September, 2002, by William C. Garbade, District Engineer, of Texas Department of Transportation-Austin Division, a political subdivision of the State of Texas, on behalf of said public body.

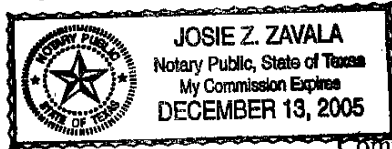


Esther B. Gottwald  
Notary Public, State of Texas

Commission Expires: August 16, 2004

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 23<sup>rd</sup> day of July, 2002, by Samuel T. Biscoe, County Judge of Travis County, a political subdivision of the State of Texas, on behalf of said public body.

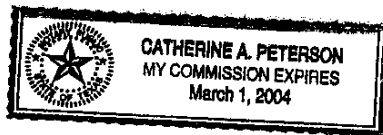


Josie Z. Zavala  
Notary Public, State of Texas

Commission Expires: \_\_\_\_\_

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 4<sup>th</sup> day of October, 2002, by Fred M. Gilliam, President/CEO of Capital Metropolitan Transportation Authority, a political subdivision of the State of Texas, on behalf of said public body.

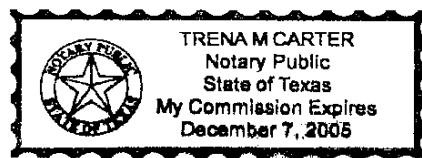


Catherine A. Peterson  
Notary Public, State of Texas

Commission Expires: 3/1/2004

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on October 10, 2002, by Toby Hammett Futrell, City Manager of the City of Austin, a Texas municipal corporation, on behalf of said corporation.



Trena M. Carter  
Notary Public, State of Texas

Commission Expires: \_\_\_\_\_