
**FIRST AMENDED
EAST TEXAS REGIONAL
TRANSPORTATION PARTNERS
MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the following entities:

- **Gregg County (“GREGG”);**
- **NDMJ, Ltd. Transportation (“NDMJ”);**
- **North East Texas Regional Mobility Authority (“NET RMA”);** and
- **Smith County, Texas (“SMITH”)**

collectively referred to hereinafter as the “Parties,” and each individually as a “Party”.

RECITALS

WHEREAS, the Parties have a shared interest in improving transportation within the East Texas Region;

WHEREAS, accessibility and utility of grant funding for certain transportation planning and improvements is greatly enhanced by collective efforts; and

WHEREAS, the Parties have agreed to join efforts to promote and advance cooperative projects for the benefit of all citizens of the East Texas Region; and

WHEREAS, the East Texas Council of Governments (“ETCOG”), NDMJ, NET RMA, and SMITH, acting as the East Texas Regional Transportation Partners, jointly submitted a proposal to the Texas Department of Transportation (“TxDOT”) to request funds from the Job Access and Reverse Commute (“JARC”) and New Freedom programs in response to TxDOT’s coordinated call for projects; and

WHEREAS, ETCOG, NDMJ, NET RMA, and SMITH previously entered into a memorandum of understanding (the “Original MOU”) regarding the formation of the East Texas Regional Transportation Partners and the obligations, roles, and responsibilities of the parties to the MOU; and

WHEREAS, in addition to the initial proposal submitted by the East Texas Regional Transportation Partners, three additional grant applications have been submitted to TxDOT on behalf of the East Texas Regional Transportation Partners; and

WHEREAS, TxDOT desires for the East Texas Regional Transportation Partners to manage the grant funding awarded pursuant to both the initial proposal submitted by the East Texas Regional Transportation Partners and the additional proposals submitted on the behalf of the East Texas Regional Transportation Partners; and

WHEREAS, the existing members of the East Texas Regional Transportation Partners mutually agree that GREGG should replace ETCOG as a member of the East Texas Regional Transportation Partners and that NET RMA should become the fiscal agent for the East Texas Regional Transportation Partners; and

WHEREAS, the Parties desire to amend the Original MOU to reflect the participation of GREGG in the East Texas Regional Transportation Partners and NET RMA's role as fiscal agent, to provide for the procurement of the services of a Project Architect, and to make other various changes to the Original MOU.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties expressly agree to the following provisions:

PART 1 – SUBMISSION OF GRANT APPLICATION; ADDITIONAL AGREEMENT: In order to maximize efficiencies and enhance funding opportunities, the Parties, acting as the East Texas Regional Transportation Partners, have submitted to TxDOT a grant application seeking funding to advance transportation projects in the East Texas Region, which may include but not be limited to:

- Regional Multi-Modal Facility Transit Hub(s) and Coordinated Traveler Management System(s);
- Regional Alternative Fuel Initiative and related infrastructure;
- County Multi-Modal Facilities;
- Passenger Railway;
- Expanded rural services; and
- Regional planning.

Additionally, three grant applications seeking additional funding, the use of which may include but not be limited to the purposes stated above, have been submitted to TxDOT on behalf of the East Texas Regional Transportation Partners, and TxDOT has agreed that the East Texas Regional Transportation Partners should manage any grant funding

awarded pursuant to those additional applications. The Parties agree to take all reasonable actions necessary to support and prosecute the grant applications and, if awarded funding, to obtain the granted funds and administer the resulting contracts, which may include the FY 12 Regional Planning: Regional Call Center Contract Amendment, the FY 13 Regional Planning Grant Contract, the Veterans Transportation and Community Living Initiative Grant Contract, and the East Texas Regional Transportation Partners 2012 Coordinated Call Contract.

In the event that the Parties are awarded grant funding, the Parties may formalize their relationship and further define their respective roles and responsibilities through an additional written agreement, if necessary.

PART 2 – TRANSIT ORIENTED REGIONAL CAPITAL PROJECTS MOBILITY MANAGER: If awarded grant funding in a sufficient amount, the Parties agree to fund a position of Transit Oriented Regional Capital Projects Mobility Manager (the “Regional Mobility Manager”). The Regional Mobility Manager shall be responsible for pursuing the projects listed in Part 1 and any additional projects as may be directed by the East Texas Regional Transportation Partners Oversight Board, including identifying and procuring additional grant funds for the projects.

The services of the Regional Mobility Manager shall be procured by the NET RMA pursuant to its policies and procedures for the procurement of such services. The Regional Mobility Manager shall act as an independent consultant to the NET RMA, and the NET RMA shall enter into a consulting services agreement with the Regional Mobility Manager setting forth the Regional Mobility Manager’s duties and responsibilities. The NET RMA shall be responsible for directing and overseeing the Regional Mobility Manager. The detailed scope of services to be performed by the Regional Mobility Manager and the compensation to be provided for such services shall be determined if grant funds are awarded and once the amount of such funding (if any) is known.

PART 3 – EAST TEXAS REGIONAL TRANSPORTATION PARTNERS OVERSIGHT BOARD: The Parties shall establish an East Texas Regional Transportation Partners Oversight Board (the “Oversight Board”) for the purpose of overseeing and directing the transportation projects to be advanced through the Parties’ joint efforts. The Oversight Board shall be responsible for determining which projects to pursue, defining the scope of work for each project, and assigning each Party’s responsibilities with respect to each project (i.e., grant writing, research and planning, support, engineering, etc.). The NET RMA shall ensure that the Regional Mobility Manager is directed to carry out the priorities adopted by and to perform the services

requested by the Oversight Board and shall periodically report to the Oversight Board regarding the Regional Mobility Manager's performance of the services.

Each Party shall appoint a Designated Representative to the Oversight Board. The Designated Representative shall be entitled to vote on behalf of the appointing Party on all decisions made by the Oversight Board. Each Party may appoint an Alternative Designated Representative to represent the Party in the event that the Party's Designated Representative is unavailable. All votes of the Oversight Board shall be decided by a simple majority; provided, however, that no Party shall be required to undertake a responsibility with respect to any project without that Party's agreement and consent. If any vote of the Oversight Board results in a tie, the Oversight Board agrees to a tie-breaker vote by the chairman, who only votes where a tie-breaker vote is needed. If the current chairman is not available, the Oversight Board may mutually agree to submit the tie-breaker vote to a similar expert who will make an unbiased decision for the benefit of the region as a whole.

The Oversight Board shall keep minutes of all meetings in order to record votes on decisions made, and each Party will be entitled to a copy of the minutes. Additional rules and procedures regarding the operations of the Oversight Board shall be contained in the additional written agreement provided for in Part 1.

PART 4 – PROJECT FINANCING: This MOU does not commit any of the Parties to contribute funds to or otherwise finance any project. Any project costs not covered by the requested grant funding will be paid subject to the mutual agreement of the Parties, as reflected in a separate written agreement, or through available alternative funding sources. Additional terms of financial management will be determined if grant funds are awarded and once the amount of such funding (if any) is known.

NET RMA will manage all funds received pursuant to this MOU, including any grant funding received from the grant submission and the matching funds described in this Part 4, unless the funds have already been granted and required by the grantor to be administered through another recipient, in which case the distribution of funds will be agreed upon by majority vote of the partners and entered as an order in the minutes of a meeting of the partners. Such minute order may include approval of an interlocal or contract with a third party, if necessary.

In the event that the granted funds are not managed by NET RMA, the entity responsible for managing the funds shall be responsible for reimbursing NET RMA for the services provided by the Mobility Manager pursuant to Part 2 and for reimbursing SMITH OR GREGG for the services of the Architect pursuant to Part 5. The party seeking reimbursement shall submit a request for reimbursement to the entity responsible

for managing the funds detailing the services performed and the costs thereof. The entity responsible for managing the funds shall reimburse the requesting party for the services within thirty (30) days of receipt of the reimbursement request.

Any project costs not covered by the requested grant funding or the matching funds committed by SMITH OR GREGG will be paid subject to the mutual agreement of the parties, as reflected in a separate written agreement, or through available alternative funding sources.

The NET RMA shall have no responsibility for any costs or expenses that exceed the available grant and matching funds.

PART 5 – PROJECT ARCHITECT: If awarded grant funding in a sufficient amount, the parties agree to fund the services of an Architect subject to the provisions below. The Architect shall be responsible for participating in stakeholder interviews to define the Multi Modal Facility (MMF) work program and developing three conceptual layouts consistent with the work program.

The services of the Architect will be procured by SMITH OR GREGG pursuant to its policies and procedures for the procurement of such services, provided that NET RMA shall ratify the selection of an Architect to provide the services. The Architect shall act as an independent consultant to SMITH OR GREGG, and SMITH OR GREGG shall enter into a consulting services agreement with the Architect setting forth the Architect's duties and responsibilities. SMITH OR GREGG shall be responsible for directing and overseeing the Architect with coordination and input from the NET RMA. The detailed scope of services to be performed by the Architect pursuant to its agreement with SMITH OR GREGG and the compensation to be provided for such services shall be determined in consultation with the NET RMA.

SMITH OR GREGG shall be responsible for compensating the Architect for the services provided. Subject to the ratification of the selection of the Architect by NET RMA, any applicable compensation limit(s), the availability of sufficient grant funding, and the approval of the expenditures by NET RMA, SMITH OR GREGG shall be eligible for reimbursement of the actual costs of the services. SMITH OR GREGG shall submit a request for reimbursement, detailing the services performed and the costs thereof, to the NET RMA for approval. Subject to approval of NET RMA and the other requirements set forth herein, NET RMA shall reimburse SMITH OR GREGG for the services within thirty (30) days of receipt of the reimbursement request. Upon reimbursement of SMITH OR GREGG, NET RMA shall have a right to any and all work product produced by the Architect and shall be entitled to use such work product for any purpose that NET RMA determines to be necessary or appropriate. Notwithstanding the

foregoing, in the event that the grant funding is managed by an entity other than the NET RMA, SMITH OR GREGG shall be reimbursed by the entity responsible for managing the funds as set for in Part 4.

PART 6 – EFFECTIVE DATE: This MOU shall take effect when it has been signed by each Party’s respective Designated Representative (the “Effective Date”).

PART 7 – DURATION OF AGREEMENT: This MOU shall continue in effect until the third anniversary of the Effective Date, unless the Parties mutually agree to terminate the MOU prior to that date. Any Party may terminate its participation in this MOU upon sixty (60) days written notice to the other Parties, subject to payment of any reasonable financial obligations that were assumed under this MOU or through a separate agreement by any terminating Party. This MOU may be renewed or extended upon the mutual agreement of the Parties.

PART 8 – NO WAIVER OF SOVEREIGN IMMUNITY: Nothing in this MOU shall be deemed to waive, modify, or amend any legal defense available at law or in equity to any of the Parties. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of sovereign immunity under the laws of the State of Texas and/or of the United States. Voting representatives of public entities shall vote under the direction and control of their governing bodies.

PART 9 – ASSIGNMENT: Neither this MOU nor any right, duty, obligation, or interest hereunder may be assigned or delegated by one Party without the prior written consent of all other Parties. This MOU is binding upon, and shall inure to the benefit of, the Parties and their respective successors, permitted assigns, and representatives.

PART 10 – TEXAS LAWS APPLY; MEDIATION: This MOU shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State of Texas without regard to principles of conflicts of law. Disagreement or questions of interpretation or conflict regarding this MOU shall be resolved first through informal discussions and then, should such discussions fail to produce satisfactory results, through use of a mutually agreed upon mediator. Informal dispute resolution and mediation processes will be fully utilized prior to any litigation.

PART 11 – FORCE MAJEURE: The Parties shall be relieved of obligations under the terms of this MOU in the event that performance by a Party is interrupted or delayed by an act of God; by acts of war, riot, or civil commotion; by an act of State; by strikes, fire, or flood; or by the occurrence of any other event beyond the control of the Parties. A Party effected by such an occurrence shall be excused from performance for

the same amount of time as such occurrence shall have lasted or as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated.

PART 12 – SEVERANCE CLAUSE: If any one or more of the provisions contained in this MOU shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision in this MOU, and this MOU shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

PART 13 – GOOD FAITH CLAUSE: The Parties agree to negotiate and act in good faith in the performance of this MOU.

PART 14 – ENTIRETY; AMENDMENTS; WAIVERS: This MOU embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the subject matter hereof. This MOU may be amended or modified only by mutual agreement of the Parties in writing and executed by all Parties. No waiver of any of the provisions of this MOU shall be deemed or shall constitute a continuing waiver unless otherwise expressly provided.

PART 15 – COUNTERPARTS: This MOU may be executed in one or more counterparts, each of which will be deemed an original and all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, GREGG, NDMJ, NET RMA, AND the SMITH have caused this agreement to be duly executed this the 28 day of FEBRUARY, 2013.

FOR GREGG COUNTY:

BY: 


HON. BILL STOUTT
GREGG COUNTY JUDGE

FOR NET RMA:

BY: 


GARY HALBROOKS
NET RMA

FOR NDMJ:

BY: 

JAMAL MOHARER
PRESIDENT, NDMJ, LTD.
TRANSPORTATION

FOR SMITH COUNTY:

BY: 

HON. JEFF WARR
COMMISSIONER, PCT. 1
SMITH COUNTY