

## INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** is made and entered into effective this 20th day of May 2009, by and between RUSK COUNTY, TEXAS (the “County”) and the NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY (the “NET RMA” or “Authority”), political subdivisions of the State of Texas (collectively, the “Parties”).

### WITNESSETH:

**WHEREAS**, the NET RMA is a regional mobility authority created pursuant to the request of Gregg and Smith Counties and operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE § 26.01 *et seq.* (the “RMA Rules”); and

**WHEREAS**, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Cass, Panola, Van Zandt, Wood and Titus joined the Authority so that it is now comprised of twelve (12) counties; and

**WHEREAS**, Rusk County is a county and political subdivision of the State of Texas and is located within the jurisdiction of the NET RMA; and

**WHEREAS**, Chapter 791 of the Texas Government Code (the “Texas Interlocal Cooperation Act”) provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

**WHEREAS**, §370.033 of the RMA Act provides that regional mobility authorities may enter into interlocal agreements with other governmental entities for project development related services; and

**WHEREAS**, the extension of Loop 571 in Rusk County from US 79, southeast to US 259 South (the “Project”) would improve mobility and quality of life in Rusk County and throughout the North East Texas region; and

**WHEREAS**, the NET RMA has the professional and technical expertise necessary to prosecute the development of the Project, including completion of property acquisition; and preparation of environmental studies, reports, and permits, and Rusk County has the financial resources necessary to fund the development of the Project; and

**WHEREAS**, the Parties have agreed that the NET RMA’s prosecution of the development of the Project would expedite the delivery of the Project to the region.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the undersigned parties agree as follows:

**I.**

**FINDINGS**

1. **Recitals.** The recitals set forth above are incorporated herein for all purposes and are found by the parties to be true and correct. It is further found and determined that the County and the Authority have authorized and approved this Agreement by resolution or order adopted by their respective bodies, and that this Agreement will be in full force and effect when approved by each party.

**II.**

**ACTIONS**

1. **Performance of Services by NET RMA.** Subject to the terms of this Agreement, the NET RMA shall perform, or supervise the performance of, services

related to the development of the Project, including completion of property acquisition; preparation of environmental studies, reports, and permits; and related legal and project director services. A detailed description of the services is set forth in the Scope of Work, attached hereto as Appendix A and made a part hereof.

2. **Transfer of Funds by Rusk County.** Rusk County shall provide funds to the NET RMA in the amount of \$411,600 to be used for the development of the Project, including completion of property acquisition; preparation of environmental studies, reports, and permits; and related project costs, including legal and project director services. A breakdown of the estimated Project costs by task is attached hereto as Appendix B, and a quarterly expense schedule for the Project is attached hereto as Appendix C.

The initial transfer of funds from Rusk County to the NET RMA shall be in the amount of \$120,234 and shall cover the estimated Project expenses for the remaining quarters of FY 2009. Following the initial payment, the County shall transfer funds to the NET RMA on a quarterly basis in the amounts reflected in Appendix C. Once the transferred funds have been expended, the NET RMA shall not authorize or perform any additional work on the Project until the next quarterly payment is received. All expenditures for the development of the Project and reflected Project costs shall be paid from the funds transferred to the NET RMA by Rusk County.

The projected costs for work related to the development of the Project as reflected in Appendix B are estimates. The actual cost(s) for development of the Project may vary from the cost(s) estimated herein. Should the actual cost(s) for work related to the development of the Project exceed the estimated cost(s), Rusk County shall be

responsible for transferring to the NET RMA funds sufficient to make up the difference between the actual cost(s) and the estimated cost(s). The NET RMA will not authorize the commencement or continuation of work in excess of the estimated amounts without the consent and approval of Rusk County.

Funds provided by Rusk County under this Agreement shall be used only for the development of the Project. In the event actual costs are less than the estimated costs and the funds provided by Rusk County, the NET RMA will promptly return the savings to Rusk County.

3. **Additional Services.** A request by Rusk County for the performance by the NET RMA of services other than those reflected on Appendix A shall require an additional transfer of funds from Rusk County to the NET RMA and shall be subject to future agreements or an amendment to this Agreement, agreed to in writing by the Parties.

4. **Termination.** Either Party may terminate this Agreement at any time upon five (5) business days written notice. The NET RMA shall return to Rusk County upon termination of this Agreement any remaining funds transferred to the NET RMA pursuant to Section 2 above except for the funds necessary to pay third parties for work performed. Absent earlier termination, this Agreement will terminate upon the earlier of Project completion or December 31, 2013.

### III.

#### GENERAL AND MISCELLANEOUS

1. **Prior Written Agreements.** This Agreement is without regard to any and all prior written contracts or agreements between the County and the Authority regarding

any other subject or matter, and does not modify, amend, ratify, confirm or renew any such other prior contract or agreement between the Parties.

2. **Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other, or to provide or to not provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

3. **Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claim on behalf of any third party. Neither the County or the Authority waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

4. **Amendments and Modifications.** This Agreement may not be amended or modified except in writing executed by both the Authority and the County, and authorized by their respective governing bodies.


5. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such

provision be reformed and construed in such a manner that it will, to the maximum extent practicable, to give effect to the intent of this Agreement and be deemed to be validated and enforceable.

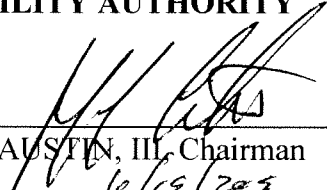
6. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date above first written, when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

**IN WITNESS WHEREOF**, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

**RUSK COUNTY, TEXAS**

By:   
The Hon. SANDRA HODGES  
County Judge  
Rusk County, Texas  
Date: 6-18-09

**NORTH EAST TEXAS REGIONAL  
MOBILITY AUTHORITY**

By:   
JEFF AUSTIN, III, Chairman  
Date: 6/19/2009

## **APPENDIX A**

### **LOOP 571 EXTENSION ENGINEERING AND ENVIRONMENTAL SERVICES SCOPE OF WORK**

#### **TASK 1 – Property Acquisition**

The Texas Department of Transportation (TxDOT) – Tyler District has conducted some preliminary planning for an approximately 3.4-mile Extension of Loop 571 (the “Project”) in or near Henderson (Rusk County), Texas. The North East Texas Regional Mobility Authority (the “Authority”), by and through its consultants, shall familiarize itself with the Preliminary Schematic materials developed by TxDOT to a degree that is sufficient to identify unique project issues and requirements that will need to be considered in the completion of the preliminary schematics, development of the design project, and associated environmental permitting. This Task will include a complete review of all readily available conceptual and schematic plans, preliminary estimates, engineering reports, design criteria, design summary report (“DSR”), environmental documents, ROW mapping, and preliminary utility coordination and any other reports, studies, or data on the Project provided by TxDOT. In addition, this task will include the review of available traffic projections, traffic models, signal warrants, and other associated planning documents readily available from TxDOT. It is understood that the project concept illustrated by current project schematics is valid, but that the alignment and other details of the existing schematics are incorrect. The Authority will develop revised, corrected schematics with correct alignments that meet current TxDOT design criteria and conform to the purpose of the Project. The Authority and its consultants shall also complete updated cost estimates for PS&E and Environmental tasks remaining on the project. The results of these reviews, schematic development, and updated estimates will be used to further refine the scope (if necessary) of the remaining PS&E and Environmental tasks.

#### **TASK 2 – Environmental Studies, Reports, and Permits**

The Authority, by and through its consultants, will also conduct and prepare the required Environmental Studies, Reports, and Permit Applications for the Project. Environmental field surveys will be conducted to identify sensitive environmental resources, including but not limited to the presence of wetlands and/or endangered and/or threatened species in the project area. Field surveys also will be conducted to determine the location of significant Cultural Resources (including prehistoric and historic sites, if any) within the project area. Project designs completed in the future shall consider avoiding or minimizing adverse impacts to the designated significant environmental and cultural sites. Public meetings and one Public Hearing will be held to obtain public input regarding the proposed Project and its potential for adverse environmental impact. An Environmental Assessment, containing environmental impact drawings and exhibits, shall be prepared and submitted along with a United States Army Corps of Engineers (“USACE”) Section 404 Permit application, as appropriate, for the Project. In addition, a Final Intensive Archeological Survey report shall be prepared and submitted to TxDOT – Environmental Division (“ENV”) and the Texas Historical Commission (“THC”), as



appropriate, for the Project. This task will culminate with obtaining the required Environmental permits and clearances for the Project.

## APPENDIX B

### LOOP 571 EXTENSION GENERAL ENGINEERING SERVICES AUTHORITY COST ESTIMATES

Preliminary estimates of costs associated with the Loop 571 Extension project (the "Project") are set forth below. There may be variations in the costs by task (and category identified within each task) and the variations are acceptable provided that the overall total cost for the Project does not exceed \$411,600 unless otherwise approved by Rusk County. Tasks will be completed in accordance with the estimated time and payment schedule in Appendix C.

#### **Task 1. Right-Of-Way Acquisition**

(a) Acquisition Services	\$ 111,600
16 Parcels	
(Estimated property cost = <b>\$1,701,000</b> )	
	<hr/>
	<b>\$ 111,600</b>

#### **Task 2. Environmental**

(a) Environmental Resources / Wetlands	\$ 81,790
(b) Cultural Resources	<u>\$ 83,210</u>
	<b>\$ 165,000</b>

Direct Expenses	\$ 10,000
Legal Services	\$ 50,000
Project Director	\$ 50,000
Engineering Mgmt. / Coordination	\$ 25,000
<b>TOTAL:</b>	<b><u>\$ 411,600</u></b>



**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE NORTH EAST TEXAS  
REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 09-15**

WHEREAS, the North East Regional Mobility Authority (“NET RMA”) was created pursuant to the request of Gregg and Smith Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.01, *et seq.* (the “RMA Rules”); and

WHEREAS, the Board of Directors of the NET RMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Cass, Panola, Van Zandt, Wood and Titus joined the Authority and are represented on the Board of Directors; and

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, § 370.033 of the RMA Act provides that regional mobility authorities may enter into interlocal agreements with other governmental entities for project development related services; and

WHEREAS, the extension of Loop 571 in Rusk County from US 79, southeast to US 259 South (the “Loop 571 Project”) would improve mobility and quality of life in Rusk County and throughout the North East Texas region; and

WHEREAS, the Board of Directors of the NET RMA believes that the an agreement between the NET RMA and Rusk County pursuant to which the NET RMA shall prosecute the development of the Loop 571 Project with funds provided by Rusk County is in the best interest of the NET RMA, Rusk County, and the North East Texas region; and

WHEREAS, in Resolution No. 09-04, dated January 14, 2009, the NET RMA Board of Directors approved entry into an interlocal agreement with Rusk County providing that the NET RMA and Rusk County would jointly prosecute the Loop 571 Project; and

WHEREAS, the interlocal agreement was subsequently revised substantially and was approved by the Board of Directors in its revised form in Resolution No. 09-11, dated February 18, 2009; and

WHEREAS, the interlocal agreement has been further revised at the direction of TxDOT.

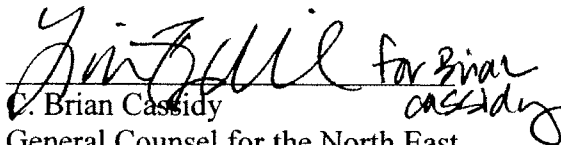
NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves entry into the revised interlocal agreement with Rusk County, in the same or substantially similar form as that attached hereto as Attachment "A", providing that the NET RMA shall prosecute the development of the Loop 571 Project with funds provided by Rusk County; and

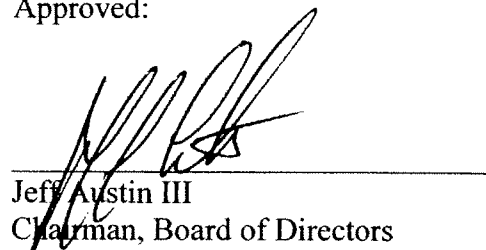
BE IT FURTHER RESOLVED, that the Chairman is authorized to execute such interlocal agreement on behalf of the NET RMA.

Adopted by the Board of Directors of the North East Texas Regional Mobility Authority on the 20th day of May, 2009.

Submitted and reviewed by:

Approved:

  
C. Brian Cassidy  
General Counsel for the North East  
Texas Regional Mobility Authority

  
Jeff Austin III  
Chairman, Board of Directors  
Resolution Number 09-15  
Date Passed: 05/20/09

**Loop 571: From US 79 to US 259  
In Henderson, Texas  
Rusk County  
Project No. CSJ 3421-01-004**

**April 3, 2009**

**Proposed Action Plan**

**TxDOT will perform the following action items to deliver this important project to the citizens of Henderson, Texas:**

- **Revise and Complete the schematic**
- **Re-evaluate the project's environmental document**
- **Coordinate the environmental document with state and federal regulatory and resources agencies**
- **Conduct public involvement for revisions to schematic and environmental document**
- **Obtain a Finding Of No Significant Impact (FONSI) to clear the project environmentally**
- **Revise and update Right-of-Way maps and deeds**
- **Prepare Plans, Specifications & Estimate (PS&E) for the project**

**NETRMA will provide scientific services to delineate wetlands and secure necessary wetland permits.**

**Project Commitments: TxDOT will deliver the FONSI by June of 2010 and the PS&E by September of 2010.**

**Rusk County will commit to funding 100% of the Right-of-Way acquisition and reimbursable utility adjustment costs. This work can begin after a FONSI is secured in June of 2010.**

**All parties will focus on project delivery and securing construction funding for the project.**