

STATE OF TEXAS §
COUNTY OF SMITH §

**MEMORANDUM OF UNDERSTANDING BETWEEN
SMITH COUNTY
AND
NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) entered into by and between Smith County, Texas (“COUNTY”), a political subdivision of the State of Texas, and North East Texas Regional Mobility Authority (“NET RMA”), a political subdivision of the State of Texas, and both parties acting herein under the authority and pursuant to the terms of the Texas Government Code, Chapter 791, “Interlocal Cooperation Contracts.” **Tex. Gov’t Code §§ 791.001 *et seq.***

RECITALS

WHEREAS, COUNTY has an interest in improving mobility, transportation, and parking within Smith County;

WHEREAS, NET RMA has an interest in improving mobility, transportation, and parking within the East Texas Region;

WHEREAS, Texas Department of Transportation (“TxDOT”) is accepting responses to requests for proposals for grant funding for certain transportation planning and improvements;

WHEREAS, COUNTY’S and NET RMA’S collective interests will be enhanced by working together to improve regional transportation for the benefit of all citizens in the region; and

WHEREAS, such cooperation is considered to be in the public interest of all citizens in Smith County, Texas and the North East Texas Region;

This MOU is made and entered into on this the ____ day of December, 2009, by and between COUNTY and NET RMA as follows:

PART 1 - CONSIDERATION: In exchange for public interest benefits to the citizens served by NET RMA and COUNTY, it is specifically agreed that NET RMA and COUNTY are partnering to have NET RMA submit a grant application to TxDOT

seeking transportation planning funds, New Freedom funds, and JARC funds for the specific purposes of creating a “Regional Multi-Modal Facility Transit Hub” and “Coordinated Traveler Management System” in Smith County, Texas.

PART 2 – PAYMENT FOR GRANT WRITING SERVICES: COUNTY has secured the services of, and will be responsible for paying, a grant writer to prepare the grant submission on behalf of NET RMA.

PART 3 – RECEIPT OF GRANT FUNDS: NET RMA will manage any grant funding received from this grant submission. Additional terms of financial management in conjunction with COUNTY will be determined if grant funds are awarded and once the amount of such funding (if any) is known. All Federal, state, and local laws must be complied with by all parties involved.

PART 4 – PROJECT: If grant funds are awarded, NET RMA will contract with PBS&J or another qualified firm to perform the necessary analyses to be performed under this grant, with such work to be funded solely with grant proceeds. COUNTY has selected NDMJ, Ltd. Transportation to serve as Mobility Manager of this project, and the parties have entered into a contract for services contingent on the award of grant funds.

PART 5 – OWNERSHIP INTEREST: Unless otherwise agreed to by the parties, COUNTY will retain ownership interest in the results of the studies and any property interests that are acquired with grant funds received and administered pursuant to this agreement.

PART 6 – BUILD PHASE OF PROJECT: Any necessary building resulting from the outcome of the assessment will be negotiated prior to construction and may continue through the working partnership between NET RMA and COUNTY if approved by both entities.

PART 7 – EFFECTIVE DATE: This agreement goes into effect when it has been signed by each party’s respective designated representative.

PART 8 – DURATION OF AGREEMENT: The term contemplated by this MOU shall be three (3) years, or until the planning phase of the project is complete, whichever is sooner. Either party may terminate this Agreement upon thirty (30) days written notice to the other.

PART 9 – NO WAIVER OF SOVEREIGN IMMUNITY: Nothing in this MOU or related agreements will be deemed to constitute a waiver of sovereign immunity.

PART 10 – TEXAS LAWS APPLY: Texas law shall apply with venue in Smith County, Texas. Parties will agree to informal mediation prior to any litigation.

PART 11 – FORCE MAJEURE: COUNTY and NET RMA 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, flood, or by the occurrence of any other event beyond the control of the parties hereto, that party shall be excused from such 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: In case 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 agreement and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

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

IN WITNESS WHEREOF, NET RMA AND COUNTY have caused this agreement to be duly executed this the ____ day of December, 2009.

FOR NET RMA:

BY: _____

JEFF AUSTIN
CHAIR OF NET RMA

ATTEST:

BY: _____

TITLE: _____

APPROVED AND AGREED:

BY: _____

BRIAN CASSIDY
ATTORNEY FOR NET RMA

FOR SMITH COUNTY:

BY: _____

JOEL P. BAKER 12-14-2009
COUNTY JUDGE

ATTEST:

BY: _____

COUNTY CLERK

BY: _____

JESSICA SANGSVANG
CIVIL ASSISTANT DISTRICT ATTORNEY

