

PUBLIC TRANSIT SYSTEM INTERLOCAL AGREEMENT

1. Parties and Purpose

a. Parties. This Public Transit System Interlocal Agreement (“Agreement”) is made and entered into by and between the Capital Area Rural Transportation System, a public transportation organization organized under Chapter 458 of the Texas Transportation Code as a political subdivision of the State, ("CARTS"), and the City of San Marcos, Texas, the principal city of the San Marcos Urbanized Area (hereafter defined) and a Texas municipal corporation (the "City"), a Texas Department of Transportation (TxDOT) authorized direct recipient of Urbanized Area Formula Program (Federal Transit Administration Section 5307) funding and an urban transit district created under Chapter 458 of the Texas Transportation Code to be effective as of October 1, 2019.

b. Purpose. This Agreement is authorized and governed by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791, specifically Section 791.011 regarding contracts to perform governmental functions and services. As used in this Agreement, the term “San Marcos Urbanized Area” shall mean the geographic area depicted on the map attached hereto as Attachment 2 and made a part hereof. On August 22, 2018 the City Council of San Marcos declared through resolution the intent to become the Direct Recipient of Urbanized Area Formula Program (Federal Transit Administration Section 5307) funds for the San Marcos urbanized area with the effective date of October 1, 2019. CARTS has demonstrated experience operating and managing public transit systems. By this Agreement, the City, as a Direct Recipient, seeks to engage the services of CARTS to assist in operating and maintaining the transit services for the San Marcos Urbanized Area.

2. Term

The term of this Agreement will commence October 1, 2019 and will end September 30, 2020. CARTS' performance under this Agreement will be contingent upon the continued receipt of state and federal funding to operate the System. Contract extensions may be undertaken in one year increments upon written agreement by both parties.

3. Transit System Services

CARTS shall operate and maintain a public transit system (the "System") within the San Marcos Urbanized Area in accordance with this Agreement and all federal requirements applicable to the City as a direct recipient of FTA Section 5307 funds and an FTA grantee or sub-grantee of Enhanced Mobility of Seniors and Individuals with Disabilities Program (FTA Section 5310) and Bus and Bus Facilities Program (FTA Section 5339) funds. In addition to the requirements and responsibilities identified in FTA Circular 9030.1E, Urbanized Area Formula Program, dated January 16, 2014, the City shall be responsible for establishing a program of projects including public participation, programming projects in the Metropolitan Transportation Plan (MTP), Transportation Improvement Program (TIP) and Unified Planning Work Program (UPWP) and creating a policy for raising fares or implementing major service reduction including public participation. CARTS and City staff will coordinate the transfer of roles and

responsibilities during the transition from CARTS to the City, as the authorized direct recipient for the San Marcos Urbanized Area.

The System services shall include fixed route bus service with complementary Americans with Disabilities Act (ADA) paratransit service as specified in Attachment 3.

In consultation with CARTS, the City shall adhere to the existing Comprehensive Public Transit Plan, the Finance and Implementation Strategy, the Title VI of the Civil Rights Act of 1964 Program, the Disadvantaged Business Enterprise (DBE) Program and the Complementary ADA Paratransit Plan for FY 2019 in accordance with all federal requirements applicable to the City as a direct recipient of FTA Section 5307 funds and an FTA grantee or sub-grantee of FTA Section 5310 and FTA Section 5339 funds. In addition, CARTS will participate in an advisory capacity reviewing plans for development projects, which may increase transit use, and meetings with Texas State University to coordinate ongoing operations between the System and the Bobcat Shuttle.

4. Funding for Services

a. Payments by the City. For services provided under this Interlocal Agreement, CARTS shall be paid the service cost per hour stipulated in Attachment 4, attached and incorporated herein for all purposes. For any contract extensions, CARTS and the City may agree to change the service cost per hour to be paid to CARTS for its services provided hereunder. Any such changes shall be memorialized in writing.

b. Annual Budget. CARTS, in consultation with designated City staff, will participate in the City's annual budget process relating to the System services contemplated under this Agreement. CARTS will provide City staff with a Service Cost Per Hour, excluding capital, proposal on or before June 15, 2020 for FY 2021 fiscal planning purposes.

c. Prompt Payment. In accordance with Chapter 2251, Texas Government Code except as provided in Section 2251.002, payment to CARTS will be made within thirty (30) days of the date the performance of the services under this Agreement are completed or the date City receives a correct invoice for the goods or services, whichever is later. CARTS may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with Texas Government Code, Section 2251.025(b).

d. Financial Records. The City shall maintain complete and accurate financial records regarding the use of the funds to support urbanized area planning and operations in accordance with FTA Circular 5010.1E, Grant Management Requirements, dated July 16, 2018. CARTS shall similarly maintain such complete and accurate records as may be necessary for the City to comply with its federal funding and audit requirements.

5. Routes and Schedules

The System will use the fixed routes and the fixed route schedules described on Attachment 1, hereof. The complementary ADA paratransit service shall extend a minimum of three-quarters (3/4) of a mile from the fixed route service. Any recommendation for major service

reduction that is consistent with Federal requirements shall be open for consideration by the City Council. CARTS shall comply with the City's policy for implementing any major service reduction and will assist City staff in identifying potential service modifications.

It is recognized that it is the goal of the City and CARTS to move as many demand response customers as is practicable to fixed route service.

6. Fares

The City shall recommend fare policy/increases for consideration by the City Council. In providing services under this Agreement CARTS shall comply with the City's established fare policy.

7. Vehicles

CARTS will use vehicles identified, procured and assigned for the San Marcos Urbanized program. Such vehicles shall be maintained in good working order and in a clean and sanitary condition.

CARTS may use other non-conforming buses or vehicles in providing System services only in a temporary back-up capacity when the other vehicles are unavailable due to repair or maintenance requirements.

8. Shelters, Signage and Transfer Center

CARTS shall continue to operate its Multi-Modal Bus Terminal within the City that serves as a centralized hub for the Urban Fixed Route Service, as well as, CARTS Regional Services. The City has a network of shelters and bus stops for the System. The City may change, add and/or delete bus stops or shelter locations as necessary to meet route changes and/or service requirements in the operation of the System. The City will provide prompt notification to CARTS of any such changes.

The City will provide equipment, labor and materials necessary for the installation and maintenance of transit system signage, shelters, trash cans and benches. The City will be responsible for providing signs, poles, shelters, trash cans or benches.

9. System and Program Administration.

The City is solely responsible for the administration of the System and the Urbanized Area Formula Program for San Marcos Urbanized Area including compliance with FTA Circulars 9030.1E and 5010.1E including Certifications and Assurances, Master Agreement, Transit Award Management System (TrAMS), Electronic Clearing House Operation (ECHO) and National Transit Database (NTD). CARTS will assist the City in collation and usage of operational data.

10. Customer Service

a. Customer Service Ride Line. CARTS shall maintain, for the City, a customer service ride line using local or toll free telephone numbers staffed with one or more live operators during regular hours of service for the receipt of System related inquiries, complaints or other communications. In addition, CARTS will provide for voice mail receipt of after-hours System related inquiries, complaints or communications. CARTS shall post notice of such telephone numbers in conspicuous locations within its facilities in the City and within any buses or trolleys operating in the System. CARTS shall respond promptly and courteously to, investigate and, using good faith efforts, attempt to resolve all complaints, inquiries and communications it receives. CARTS will assist the City in transitioning this function to the purview of the City.

b. Complaint Reports. CARTS shall keep a record of the dates and times complaints are received and the dates and times the complaints are resolved by CARTS (or if not resolved, the good faith efforts used to attempt to resolve the complaint) and provide such record to the City Manager on a quarterly basis during the term of the Agreement. CARTS will assist the City in transitioning this function to the purview of the City.

11. Performance Reports

CARTS shall collect and share data covering CARTS' operation of the System during the preceding month, the content and format of which will be mutually agreed upon by CARTS and the City.

12. Audit

CARTS agrees to maintain accounts and records for all costs of operation of the System separate from all rural operations. Such records will be made available by CARTS to the City for inspection during normal business hours upon reasonable notice.

13. Waiver of Franchise Fees

The City, as part of its consideration for this Agreement, waives any franchise fees it is authorized to impose upon CARTS, as the City's contracted agent, for the operation of the System upon the public streets of the City.

14. Insurance

CARTS agrees to maintain in full force and effect all forms of insurance required by applicable local, state and federal regulatory authorities in at least the minimum amounts prescribed by those authorities. CARTS shall furnish written certificates of such coverage to the City annually. The City shall be named as an additional insured under all policies for such required insurance. The limits of any such insurance shall not limit the obligation of CARTS under Section 15 below.

15. Indemnity

To the extent allowed by law, a Party will defend, indemnify, and hold harmless the other Party for all claims and damages arising from the alleged acts or omissions of the Party's employees or contractors. However, nothing in this Agreement shall require a Party to establish an interest and sinking fund in connection with its indemnity obligations hereunder.

16. Governing Law and Venue

This Agreement shall be governed by the laws of the State of Texas, and mandatory venue for any legal dispute under this Agreement is in the State court in Hays County, Texas having jurisdiction over the dispute.

17. Notices

Notices and approvals under this agreement are to be delivered personally, mailed by certified mail, or transmitted by confirmed facsimile to the recipient at the following addresses:

CARTS:	City of San Marcos:
General Manager	City Manager
5300 Tucker Hill Lane	630 E. Hopkins
Cedar Creek, TX 78612	San Marcos, TX 78666
Fax (512) 478-1110	Fax (512) 396-4656

Each party will notify the other of any changes in this address information.

18. Termination

Either party may declare a default under this Agreement if the other party fails to comply with any of the terms of this Agreement. If one party determines that the other party is in default of this Agreement, the non-defaulting party will notify the defaulting party in writing of such default, and if the default is not cured within 30 days from the date of the notice, then the non-defaulting party may terminate this Agreement upon written notice. Either party may exercise its remedies for default in conjunction with one another or separately, and together with any other statutory or common law remedies available to such party. Any failure by the non-defaulting party to enforce this Agreement with respect to one or more defaults by the defaulting party will not waive the non-defaulting party's ability to enforce the Agreement after that time.

The City may terminate this Agreement for any reason by providing six months' advance written notice of termination to CARTS. If the City terminates for any reason other than a default by CARTS, CARTS shall be entitled to receive payments for services performed in operating and maintaining the System and winding down through the termination date stated in the notice. CARTS may terminate this Agreement for any reason by providing six months' advance written notice of termination to the City. CARTS shall be entitled to receive payments for expenses reasonably incurred in operating the System and winding down through the

termination date stated in the notice.

19. Dispute Resolution

a. Notice & Conferences. If a party believes that the other has not met, or is not meeting, an obligation under this Agreement, the party will contact the other's contact person listed in Section 19 to discuss the issue. If discussions do not resolve the issue, then the party will notify the other in writing of the complaint with reasonable detail to permit the other party to address the issue. The other party will then have a reasonable time—ordinarily not to exceed 14 calendar days—to address and improve its performance.

If these discussions do not resolve an issue, then the City and CARTS shall select designees to meet in person to discuss and try to resolve any issue. This process should take no more than five business days, unless the parties agree otherwise. By enacting and adopting this Agreement, the City and CARTS authorize said designees to resolve such issues without separate contemporaneous approval, so long as they do not materially increase the obligations assumed by their respective principals in this Agreement's express terms.

If these efforts don't resolve the issue, then the parties on each side of a dispute may write a letter to the others' governing body. Each party will circulate the other's letter to its governing board.

b. Prerequisites to a Lawsuit or Other Proceeding. The parties recognize that each are bound to the Texas Open Meetings Act and other regulations which may, in some cases, result in delays in the parties' respective designees securing authority necessary to resolve a dispute. No party may file a claim or lawsuit in any forum before the parties are finished using the above procedures, have had an opportunity to deliberate on the matter at a properly noticed meeting of its governing body, and the parties have participated in mediation with a mediator qualified and experienced in public-safety contracts of this or a similar nature. A court or other authority may stay a proceeding or dismiss a claim pending the parties' use of these procedures—except that a party may ask the court or authority to appoint a mediator if the parties cannot agree on one.

c. Emergency Exception. As an exception, party may file a petition and an application for a temporary restraining order, preliminary injunction, declaration, or similar equitable relief in the event of an emergency and to continue or restore the status quo that existed prior to the dispute.

20. Miscellaneous

a. Compliance with Laws. In carrying out its obligations under this Agreement, the Parties shall comply with all applicable state, federal and local transportation, safety and other laws, rules, regulations.

b. Entire Agreement. This Agreement is the entire agreement of the parties on this subject matter, and may be amended only by a written document executed by the authorized

representatives of the parties.

c. Severability. If any part of this Agreement is determined to be invalid by a court or regulatory authority of competent jurisdiction, the rest of the agreement remains in effect unless contrary to the manifest intent of the parties.

d. Assignment. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party.

e. Current Revenues. The parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from current lawfully appropriated revenues available to the paying party.

f. No Co-Employers. The parties are not agreeing to act as co-employers of any persons by virtue of this Agreement alone. Likewise, the parties are not entering a joint-venture or agency relationship by virtue of this Agreement alone.

g. No Personal Liability, No Waiver of Immunity, No Non-Party Beneficiaries. This Agreement does not create any form of personal liability on the part of any official, officer, employee, or agent who is an individual. Each party will not sue or try to hold an official, officer, employee, or individual agent of the other party personally liable for any personal injuries or property damage. The parties do not waive any form of immunity by signing this Agreement. If a person, who is not a party to this Agreement, files or asserts a claim against one or both of the parties to this Agreement, then the parties will assert and pursue all immunity and other defenses against the claim. In addition, however, each party may pursue its third-party practice rights against other party in the context of a claim by person who is not a party to this Agreement. The parties do not intend to create a claim or right for, or in favor of, a person or entity who is not a party to this Agreement.

h. Authorized Signatories. The undersigned officers of the parties hereto have been duly authorized by appropriate legislative action of their respective governing bodies to execute this Agreement and bind the represented party to the terms hereof

[SIGNATURES ON NEXT PAGE]

EXECUTED and to be effective as of the 1st day of October, 2019.

**CAPITAL AREA RURAL TRANSPORTATION
SYSTEM:**

By: _____
David L. Marsh, General Manager

ATTEST:

By: _____
Printed Name/Title

CITY OF SAN MARCOS:

By: _____
Bert Lumbreras, City Manager

ATTEST:

By: _____
Jamie Lee Case, City Clerk

ATTACHMENT 1

ATTACHMENT 2

ATTACHMENT 3

ATTACHMENT 4