



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

October 30, 2019
AGENDA ITEM #5

Approve an Interlocal Agreement with the
North East Texas Regional Mobility Authority
for Pay By Mail receivables management
services

Strategic Plan Relevance:	Regional Mobility
Department:	Operations
Contact:	Tracie Brown, Director of Operations
Associated Costs:	60% of any administrative fees collected up to 8% of the portfolio balance (<i>approx. \$3M</i>)
Funding Source:	General Fund
Action Requested:	Consider and act on draft resolution

Summary:

Background: In August 2019 the Mobility Authority concluded its 11-year relationship with the Municipal Services Bureau (MSB) for support of its Pay By Mail program. As the Pay By Mail (PBM) service provider, MSB issued bills, processed payments, provided customer services, supported criminal misdemeanor enforcement efforts and provided first party collection services.

Staff proposes to enter into an interlocal agreement (ILA) with the North East Texas Regional Mobility Authority (NET RMA) through their provider, SWC Group, for payment processing and the collection of unpaid tolls and administrative fees incurred prior to November 18, 2018.

SWC Group's compensation for these services is 60% of any administrative fees collected with the remainder remitted to the Mobility Authority as well as 100% of the tolls collected. The share of collected fees switches to 40 % / 60% after SWC reaches its collection goal of 8%. SWC's total compensation is estimated at \$3M. The term of the contract ends on September 12, 2020 but includes two six-month renewal options.

Previous Actions: In 2007 the Mobility Authority contracted with MSB to be its PBM service provider. In January 2013, the Mobility Authority executed an Interlocal

Agreement to provide those same services to the NET RMA. After a 13-month competitive process, the Mobility Authority selected Cofiroute USA, LLC as its new PBM service provider and entered into a contract in February 2018. These services were again made available to NET RMA through a new Interlocal Agreement approved by the CTRMA Board in September 2018. Compensation for the services being performed will be made on a pass-through basis, resulting in a zero cost to the Mobility Authority.

Action Requested/Staff Recommendation: Staff recommends approval of the interlocal agreement with the North East Texas Regional Mobility Authority for payment processing and second party receivables management services.

Financing: General Fund

Backup Provided: Draft Resolution
Interlocal Agreement between NET RMA and CTRMA for
receivables management services

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 19-0XX

**APPROVE AND INTERLOCAL AGREEMENT WITH THE
NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY FOR
PAY BY MAIL RECEIVABLES MANAGEMENT SERVICES**

WHEREAS, by Resolution No. 07-71 dated December 7, 2007, the Board approved an agreement with Municipal Services Bureau (MSB) to provide Pay By Mail processing, violation processing, collections, and customer support for the Central Texas Regional Mobility Authority (Mobility Authority); and

WHEREAS, in August 2018, MSB officially concluded its services to the Mobility Authority as the Mobility Authority completed its transition to a new service provider going forward; and

WHEREAS, at the conclusion of the MSB agreement, certain accounts receivable related to the Mobility Authority's operation of a toll road system remained outstanding, including unpaid tolls, processing fees, and administrative fees occurring prior to November 18, 2018; and

WHEREAS, effective as of September 12, 2019, the North East Texas Regional Mobility Authority (NET RMA) entered into a contract with Southwest Credit Systems, L.P. (SWC) for Pay By Mail receivables management services; and

WHEREAS, NET RMA staff and the Mobility Authority staff have developed a proposed interlocal agreement under which the NET RMA, through SWC, will provide the Mobility Authority payment processing and receivables management services for the collection of the Mobility Authority's unpaid tolls and administrative fees occurring prior to November 18, 2018; and

WHEREAS, the Executive Director recommends that the Board approve the proposed interlocal agreement with NET RMA in the form or substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the entry into an interlocal agreement with NET RMA for Pay By Mail receivables management services in the form or substantially same the form attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED that the Executive Director is authorized to finalize and execute the interlocal agreement with NET RMA on behalf of the Mobility Authority.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of October 2019.

Submitted and reviewed by:

Approved:

Geoffrey Petrov, General Counsel

Robert W. Jenkins, Jr.
Chairman, Board of Directors

Exhibit A

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made and entered into effective as of the ____ day of November 2019, by and between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“CTRMA”) and the NORTH EAST TEXAS REGIONAL MOBILITY AUTHORITY (“NET RMA”), political subdivisions of the State of Texas (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the CTRMA is a regional mobility authority created pursuant to the request of Travis and Williamson Counties and operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE §§ 26.1 *et seq.* (the “RMA Rules”); and

WHEREAS, the NET RMA is a regional mobility authority created pursuant to the request of Gregg and Smith Counties and operating pursuant to the RMA Act and the RMA Rules; and

WHEREAS, subsequent to the initial formation of the NET RMA the Counties of Cherokee, Rusk, Harrison, Upshur, Bowie, Panola, Titus, Van Zandt, Wood, Kaufman, Camp, and Cass joined the NET RMA 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, Section 370.033 of the RMA Act provides that a regional mobility authority may enter into contracts or agreements with another governmental entity; and

WHEREAS, the CTRMA currently operates the 183A Toll, 290 Toll, 71 Toll, 45 SW Toll, 183S Toll and MoPac Express Lane toll projects; and

WHEREAS, the CTRMA is in need of pay by mail receivables management services related to the previous Pay By Mail program administered by Gila Corp. dba Municipal Services Bureau (MSB); and

WHEREAS, the NET RMA recently completed a procurement for pay by mail receivables management services (the “Services”); and

WHEREAS, following the evaluation process and selection of a vendor, the NET RMA entered into a contract with Southwest Credit Systems, L.P. (“SWC”) for the provision of the Services (the contract, along with any amendments thereto being collectively referred to as the “SWC Contract”); and

WHEREAS, the SWC Contract specifically provides that the Services will be provided to the NET RMA and may also be provided for the benefit of other entities, including the CTRMA; and

WHEREAS, the SWC Contract further provides that the terms related to the performance of the Services for the NET RMA shall apply equally to the Services provided for the CTRMA; and

WHEREAS, the Parties have agreed that it would be to their mutual benefit for the CTRMA to seek performance under the SWC Contract.

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

I. FINDINGS

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 Parties have authorized and approved the Agreement by resolution or order adopted by their respective governing bodies, and that this Agreement will be in full force and effect when approved by each party.

II. ACTIONS

1. Provision of Services. Subject to the terms of this Agreement, the NET RMA and/or its consultants shall facilitate the CTRMA's utilization of the resources and Services provided under (i) the SWC Contract; and (ii) any amendments or successor agreements, in connection with the provision of the Services for CTRMA's toll projects and any other CTRMA transportation projects. Article 1 and Appendix "A" of the SWC Contract set forth the general scope of the Services, including but not limited to payment processing and collection of outstanding tolls, administrative fees and processing fees as a result of unpaid toll bills. All terms related to the performance of the Services under the SWC Contract to the NET RMA apply equally to the Services provided to the CTRMA.

2. Enforcement of SWC Contract; Key Performance Indicators. The NET RMA has the right to seek performance under the SWC Contract and enforce the terms of the SWC Contract on behalf of the CTRMA. The pay by mail receivables management services being provided to the CTRMA pursuant to this Agreement are an extension of the Services being provided to the NET RMA under the SWC Contract. As such, unless different Key Performance Indicators ("KPIs") are identified by CTRMA and agreed to by SWC, the NET RMA shall require that the same KPIs set forth in Appendix "B" of the SWC Contract are established and maintained for the Services for CTRMA transportation projects. As further provided below, the NET RMA shall enforce such KPIs and other standards in the SWC Contract on the CTRMA's behalf, and the NET RMA shall not agree to modify the KPIs as they apply to CTRMA's transportation projects without the prior written consent of the CTRMA, provided that nothing herein shall preclude the NET RMA from establishing different KPIs that are unique to NET RMA transportation projects or operations without the consent of the CTRMA. If at any time during the term of this Agreement the CTRMA

finds that SWC is not meeting the KPIs for pay by mail receivables management services for CTRMA transportation projects or is otherwise not complying with the terms of the SWC Contract, the CTRMA may provide written notification to the NET RMA of the nature of the non-compliance and the necessary corrective action. Upon receipt of such notification, the NET RMA shall, on CTRMA's behalf and in a timely manner, use the remedies available in the SWC Contract to enforce the SWC Contract and to demand that SWC take corrective action. In the event the CTRMA believes it has been damaged and is owed compensation or other relief by SWC, the NET RMA shall cooperate with the CTRMA to assert such claims on the CTRMA's behalf. To the extent there are any third-party expenses associated with the pursuit of claims or remedial action for the benefit of the CTRMA, the CTRMA shall pay such expenses provided that such expenses and/or the retention of third parties in connection with such efforts is approved by the CTRMA, in writing. It is the CTRMA's obligation to monitor SWC's performance under the SWC Contract as it relates to the CTRMA (including, without limitation, proper implementation of CTRMA's settlement policies), and the NET RMA shall have no liability for lost revenue or other losses due to SWC's failure to perform.

3. Cost of Services and Payment. The CTRMA shall provide SWC with all necessary information regarding toll transactions and administrative fee provisions incurred by users of CTRMA transportation projects. The SWC Contract provides that SWC shall be entitled to retain a portion of the toll transaction and/or administrative fee amounts as full compensation for the Services provided under the SWC Contract, in amounts as provided for in Appendix "C" of the SWC Contract. As directed by the CTRMA, SWC will remit the amounts collected for toll transactions and administrative fees for the use of CTRMA transportation projects, net of the compensation owed to SWC for the provision of the Services, to the CTRMA on a weekly basis. The CTRMA shall be responsible for verifying that SWC is charging the correct tolls and fees and is retaining amounts authorized under the SWC Contract, and SWC shall provide the CTRMA with a weekly summary, in such detail as is required by the CTRMA, of tolls and fees charged and tolls and fees collected in providing the Services for the preceding week.

In the event there is a discrepancy that cannot be resolved through direct discussion between the CTRMA and SWC, or an event of nonpayment of amounts the CTRMA claims it is owed, the NET RMA will, at the CTRMA's request and in a timely manner, take actions necessary to secure necessary information (including, without limitation, asserting the right to review, copy and audit SWC's records related to CTRMA transportation projects as provided for in the SWC Contract) and/or assert such rights and claims as are provided for in the SWC Contract and that are directed by CTRMA. To the extent there are any third-party expenses associated with the pursuit of claims or remedial action for the benefit of the CTRMA, the CTRMA shall pay such expenses provided that such expenses and/or the retention of third parties in connection with such efforts is approved by the CTRMA, in writing.

Payments due to the CTRMA under this Agreement shall be made to the CTRMA via wiring instructions provided by the CTRMA.

4. Amendments to the SWC Contract. The SWC Contract was procured by the NET RMA, and the provision of Services to the CTRMA is contingent upon the terms of the SWC Contract. As such, the NET RMA shall not agree to amend any material terms of the SWC Contract that

relate to the Services to be provided to the CTRMA without the prior written consent of the CTRMA.

III. GENERAL AND MISCELLANEOUS

1. Term and Termination. Subject to further extension by written agreement of the Parties, this Agreement shall be effective as of the date first written above and shall continue in force and effect for the remaining term of the SWC Contract including any renewal terms. Notwithstanding the foregoing:

- a. if the SWC Contract is terminated, this Agreement shall terminate on the same day that the SWC Contract terminates, provided that the NET RMA shall give the CTRMA written notice of the termination within five (5) business days of providing notice to or receiving notice from SWC in accordance with the SWC Contract;
- b. either party may terminate this Agreement in the event of a material breach of its terms, which may include, but is not limited to, failure to make timely payments of amounts owed and failure of the Services to be provided in accordance with this Agreement, provided that the party seeking to terminate the Agreement has provided written notice to the other of the alleged default and the default has not been cured within thirty (30) days of receipt of such notice; or
- c. either party may terminate this Agreement upon ninety (90) days written notice to the other.

2. Prior Written Agreements. This Agreement is without regard to any and all prior written contracts or agreements between the Parties regarding any other subject matter and does not modify, amend, ratify, confirm, or renew any such other prior contract or agreement between the Parties.

3. 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 service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

4. 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 claims on behalf of any third party. Neither of the Parties 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.

5. Amendments and Modifications. This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

6. 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(s), and the rights and obligations 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, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

7. 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 first written above, when both 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.

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

By: _____
Mike Heiligenstein
Executive Director

**NORTH EAST TEXAS
REGIONAL MOBILITY AUTHORITY**

By: _____
Chris Miller
Executive Director