



CENTRAL TEXAS REGIONAL  
**MOBILITY AUTHORITY**

September 28, 2022  
**AGENDA ITEM #14**

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Discuss and consider approving the second amendment to the design-build contract with Colorado River Constructors for the 183 South Project to modify procedures for appeal of the contract disputes board's recommendations

Strategic Plan Relevance: Not Applicable  
Department: Legal  
Contact: Geoff Petrov, General Counsel  
Associated Costs: None  
Funding Source: Not Applicable  
Action Requested: Consider and act on a draft resolution

**Background:**

Colorado River Constructors (CRC), the contractor for the 183 South Project, submitted a claim for additional compensation and schedule relief for alleged delays in the City of Austin's utility permitting process. CTRMA and CRC have attempted to resolve the claim through the contractual dispute resolution process, which concluded with a disputes review board recommendation on March 8, 2022. CTRMA and CRC now agree that the disputes review board's recommendations are not binding but that either party should be allowed to seek a judicial resolution of the dispute by filing a lawsuit if the parties are not able to otherwise reach a settlement. As a result, the Executive Director and CRC executives have developed the Second Amendment to the Design/Build Contract to modify the procedures for appeal of the disputes review board's recommendations.

**Backup provided:** Draft Resolution  
Second Amendment to 183 South D/B Contract

**SECOND AMENDMENT TO THE  
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT DESIGN/BUILD CONTRACT**

The Central Texas Regional Mobility Authority (the “Mobility Authority”), a regional mobility authority operating pursuant to Texas Transportation Code Chapter 370, and Colorado River Constructors, an unincorporated joint venture between Fluor Enterprises, Inc. and Balfour Beatty Infrastructure, Inc. (“D/B Contractor”) entered into a design-build contract (“D/B Contract”) dated July 29, 2015 for the development of the Project. Pursuant to Section 29.3 of the D/B Contract, the Parties now enter into this Second Amendment to the Design/Build Contract (“Second Amendment”) for the purposes described herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the D/B Contract.

**I. Recitals**

**1.01 WHEREAS**, D/B Contractor submitted certain claims for additional compensation and schedule relief which have been rejected by the Mobility Authority (the “Proposed Change Order 5 Dispute”).

**1.02 WHEREAS**, pursuant to Section 25 of the D/B Contract, D/B Contractor submitted the Proposed Change Order No. 5 Dispute to the Disputes Board and a formal hearing was held on February 8-9, 2022.

**1.03 WHEREAS**, the Disputes Board issued its findings and recommendations for the Proposed Change Order 5 Dispute on March 8, 2022 (“March 8 DRB Recommendations”).

**1.04 WHEREAS**, Section 25.5.8 of the D/B Contract originally provided a six-month period following issuance of the Disputes Board’s recommendations for either Party to appeal the decision back to the Disputes Board, submit the dispute to judicial resolution or settle the dispute using other methods. If the dispute has not been submitted to judicial resolution or otherwise resolved within this six-month period, the Parties are deemed to have conclusively agreed to accept the recommendation made by the Disputes Board.

**1.05 WHEREAS**, on September 1, 2022, the Parties entered into the First Amendment to the Design/Build Contract to extend the six-month deadline set forth in Section 25.5.8 of the D/B Contract by an additional month to allow more time to explore settlement of the dispute, and agreed that with respect to the March 8 DRB Recommendations and the Proposed Change Order 5 Dispute, the deadline under Section 25.5.8 would be October 11, 2022.

**1.06 WHEREAS**, the Parties now agree that the March 8 DRB Recommendations is not binding and in no event shall either Party be deemed to have agreed to accept the recommendation made by the Disputes Board even if it elects not to file suit or otherwise appeal the recommendation.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual agreements and covenants set forth herein, the Mobility Authority and D/B Contractor hereby amend the D/B Contract as follows:

## **II. Amendments**

**2.01** From and after the effective date of the D/B Contract, Section 25.5.8 is hereby replaced with the following:

Should either Party reject the Disputes Board's recommendations, either Party may seek to resolve the dispute by filing a lawsuit against the other Party in District Court in Austin, Texas as specified in Section 25.1.3 or resort to other methods of settlement. The recommendation of the Disputes Board is not binding and in no event shall either Party be deemed to have agreed to accept the recommendation made by the Disputes Board even if it elects not to file suit or otherwise appeal the recommendation.

## **III. General Conditions**

**3.01 Effect of Second Amendment.** The terms and conditions of the D/B Contract are incorporated by reference for all purposes. Except as specifically amended and modified by this Second Amendment, the parties hereby agree that the terms and conditions of the D/B Contract remain in full force and effect as written.

**3.02 Duplicate Originals.** This Second Amendment may be executed in duplicate originals, each of equal dignity.

**3.03. Effective Date.** This Second Amendment will be effective as of the effective date of the D/B Contract.

**IN WITNESS WHEREOF,** the authorized representatives of the Mobility Authority and D/B Contractor have executed this Second Amendment as of the date(s) indicated below.


**[Signature Page to Follow]**

**D/B CONTRACTOR:**

**COLORADO RIVER CONSTRUCTORS**

An unincorporated joint venture between Fluor Enterprises, Inc. and Balfour Beatty Infrastructure, Inc.

**By: Fluor Enterprises Inc., a California corporation**

By:  \_\_\_\_\_



Name: Thomas Nilsson  
Title: Vice-President, Operations

**By: Balfour Beatty Infrastructure, Inc., a Delaware corporation**

By: \_\_\_\_\_

Name: John Rempe  
Title: Executive Vice President

**MOBILITY AUTHORITY:**

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

A regional mobility authority operating pursuant to Texas Transportation Code, Chapter 370

By: \_\_\_\_\_

Name: James Bass  
Title: Executive Director

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