



CENTRAL TEXAS  
Regional Mobility Authority

## AGENDA ITEM #6 SUMMARY

Authorize the Executive Director to execute a restated and amended development agreement with Cedar Park Town Center L.P.; procure bids to improve the southbound 183A frontage road at RM 1431; award a contract to the lowest best bidder; and execute a contract with the lowest best bidder.

Strategic Plan Relevance: Regional Mobility

Department: Engineering

Associated Costs: \$150,000

## Funding Source:

General Funds (The Developer has agreed to an estimate for construction costs, plus a 15% contingency reserve and 8% for fees the Mobility Authority will incur for oversight and inspection. The work includes minor roadway improvements desired by the Mobility Authority, to be paid by the Mobility Authority).

### Board Action Required: Yes

Description of Matter: On May 22, 2013, the Board authorized the Mobility Authority to enter into a development agreement with the Cedar Park Town Center, LP ("Developer") regarding construction of a right turn lane and associated improvements to the southbound 183A frontage road at RM 1431. The improvements are in connection with the construction of a new Costco store.

Two bids to construct the improvements were received and opened on July 22, 2013. The Developer determined not to pay the additional \$215,919.52 into the escrow account as provided by the development agreement to assure payment of the developer's portion of the total construction costs.

Developer has requested the Mobility Authority enter into a restated and amended development agreement and escrow agreement and issue a new procurement for a construction contract for the improvements. In the proposed agreement, a new estimate of construction costs has been calculated by averaging the amounts submitted by the two bidders, increasing the previous estimate for the bid items cost from \$464,392.00 to \$653,262.18. Before soliciting new bides, the developer is required to pay an additional \$232,310.32 into the escrow account, so that

the accounts contains a total of \$619,012.48 to assure payment of the Developer's contribution of the total improvement costs, including the construction contract, oversight, and a contingency amount of 15%. The agreement continues to provide for a refund of surplus funds from the escrow account if the contract with the lowest best bid is less than the \$653,262.18 estimate for the bid items; and the developer must pay additional funds into escrow if the lowest best bid exceeds that estimate.

The proposed resolution approves and authorizes the Executive Director to execute the restated and amended development agreement and escrow agreement, authorizes procurement of a construction contract for the proposed improvements, and further authorizes the executive director to award and execute a contract without further Board action if the cost to the Mobility Authority does not exceed the \$150,000.00 established by the development agreement and sufficient funds are deposited into the escrow account to pay construction costs, oversight, and provide a 15% contingency.

Reference documentation:

Proposed Resolution  
Proposed Contract Documents

Contact for further information:

Wesley M. Burford, P.E., Director of Engineering

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

**RESOLUTION NO. 13-\_\_\_\_**

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A RESTATED AND AMENDED DEVELOPMENT AGREEMENT WITH CEDAR PARK TOWN CENTER L.P., PROCURE BIDS TO IMPROVE THE SOUTHBOUND 183A FRONTAGE ROAD AT RM 1431; AWARD A CONTRACT TO THE LOWEST BEST BIDDER, AND EXECUTE A CONTRACT WITH THE LOWEST BEST BIDDER.**

WHEREAS, Cedar Park Town Center LP (the “Developer”) is developing property abutting the southbound 183A frontage road at and near its intersection with RM 1431 (East Whitestone Boulevard); and

WHEREAS, to provide safe and sufficient access to the development and travelers on the 183A frontage road, the Developer and the Mobility Authority have negotiated a development agreement to construct improvements to the southbound 183A frontage road to provide safer access to the accessed property after it is developed for retail uses (the “Project”); and

WHEREAS, in accordance with the development agreement with Developer effective June 24, 2013, the Mobility Authority solicited bids to construct the Project, but has rejected all bids received on July 22, 2013, for the Project because the Developer did not pay additional funds into escrow as required by the development agreement; and

WHEREAS, the Developer has requested that the Mobility Authority enter into a restated and amended development agreement and restated and amended escrow agreement in the form or substantially the form attached as Exhibit 1 (the “Restated Agreements”), and that the Mobility Authority solicit new bids for the Project in accordance with the terms and conditions of the proposed Restated Agreements; and

WHEREAS, the Executive Director recommends approval of the proposed Restated Agreements so the Project may proceed;

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves the proposed Restated Agreements, and authorizes the Executive Director to execute the Restate Agreements with Cedar Park Town Center LP in the form or substantially in the forms attached to this resolution as Exhibit 1; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to advertise for bids to construct the proposed Project in accordance with terms and conditions of the Restated Agreements and the Mobility Authority’s procurement policies; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized without further action by the Board to award a contract to construct the Project to the lowest best bidder consistent with the Mobility Authority Procurement Policies, the invitation to bid, the bid proposal package received from lowest best bidder, and this resolution; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized without further action by the Board to execute a contract with the lowest best bidder to construct the Project, on terms and conditions acceptable to the Executive Director and consistent with Mobility Authority Procurement Policies, the invitation to bid, the bid proposal package received from lowest best bidder, and this resolution, but only after the Executive Director has determined that Developer has complied with all payment and other obligations established by the Restated Agreements and that the total cost to the Mobility Authority to construct the Project will not exceed \$150,000.00.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 28<sup>th</sup> day of August, 2013.

Submitted and reviewed by:

---

Andrew Martin  
General Counsel for the Central  
Texas Regional Mobility Authority

Approved:

---

Ray A. Wilkerson  
Chairman, Board of Directors  
Resolution Number 13-  
Date Passed: 8/28/13

**ATTACHMENT “A” TO RESOLUTION 13-**  
**PROPOSED RESTATED AGREEMENTS WITH**  
**CEDAR PARK TOWN CENTER LP**

[on the following 18 pages]

**RESTATED AND AMENDED**  
**DEVELOPMENT AGREEMENT**

This Restated and Amended Development Agreement (“Agreement”) is effective August \_\_\_\_\_, 2013, and is between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Mobility Authority”) and CEDAR PARK TOWN CENTER LP, a Texas limited partnership (“Developer”). Mobility Authority and Developer may be referred to collectively in this Agreement as the “Parties,” and individually as a “Party.”

WHEREAS, Mobility Authority recently completed its construction of the 183A Phase II Turnpike Project, from RM 1431 to a point north of the intersection of 183A and Hero Way (“183A”); and

WHEREAS, Developer is the owner (or the developer for the owner) of certain real property in the City of Cedar Park, Texas, that abuts the southbound frontage road for 183A, more fully described as follows:

Lots 1 - 5 and Lots 7 - 11 in the Final Plat Cedar Park Town Center - Phase II, being situated in Williamson County, Texas, out of the Sherwood J. Dover Survey, Abstract No. 168, according to the map or Plat thereof recorded in Clerk’s File No. 2013022149 of the Official Public Records of Williamson County, Texas (the “Property”); and

WHEREAS, to facilitate traffic management for the benefit of both the public and for the users and occupants of the Property after the Property is developed, Developer and Mobility Authority have agreed on construction of a new frontage road lane and associated improvements including milling and overlay of existing pavement in the southbound 183A frontage road abutting and serving the Property, starting at a point located approximately 3,100 feet north of RM 1431, continuing south to the intersection of the southbound 183A frontage road with RM 1431 (the “Roadway Project”); and

WHEREAS, Mobility Authority and Developer entered into that certain Development Agreement effective June 24, 2013 (the “Initial Agreement”), providing, among other things, for the funding by the Parties of the Roadway Project (with all capitalized terms not defined in this Agreement having the same meanings ascribed to them in the Initial Agreement); and

WHEREAS, Mobility Authority and Developer also entered into that certain Escrow Agreement effective June 24, 2013 (the “Initial Escrow Agreement”), and, in accordance with the Initial Agreement and the Initial Escrow Agreement, Developer has paid \$386,702.16 into the escrow account (the “Initial Escrowed Funds”) and the Initial Escrowed Funds are currently held by the Escrow Agent pursuant to the terms and conditions of the Initial Escrow Agreement; and

WHEREAS, after consulting with Developer, the Development Agreement included a Cost Estimate of \$464,392 for the Roadway Project; and

WHEREAS, in accordance with the Initial Agreement, Mobility Authority solicited bids to procure a construction contract for the Roadway Project, including an estimated project cost of between \$400,000 to \$500,000 in the bid solicitation; and

WHEREAS, following the bidding process, the lowest bid for constructing the Roadway Project was \$639,836, an amount substantially in excess of the estimated cost; and

WHEREAS, the Developer has determined not to pay the additional funds of \$215,919.52 into escrow by August 13, 2013, as required by the Initial Agreement to fund the Developer's agreed portion of the cost of the Roadway Project; and

WHEREAS, because Developer has elected not to pay the additional funds into escrow to fund the Developer's agreed portion of the cost of the Roadway Project, the Mobility Authority has determined it is in its best interest to reject all bids submitted to construct the Roadway Project; and

WHEREAS, the Parties desire to initiate a new procurement process for the Roadway Project in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, Mobility Authority and Developer hereby agree as follows:

**A. ROADWAY PROJECT**

1. The Roadway Project is further defined as construction of a 12-ft wide frontage road lane, curbed and guttered, together with milling and overlay of existing pavement and all required and related construction and drainage improvements, as generally illustrated by **Exhibit 1** to this Agreement.
2. Developer has prepared and provided to Mobility Authority the design and construction documents required for the Roadway Project, including plans in accordance to TxDOT Standards and Specifications; a Construction Manual that includes all documents, specifications, special provisions, special specifications and general notes required by Mobility Authority; a Construction Schedule; native CADD files used in the development of the construction documents; an electronic file in PDF format for each document provided under this section; and any other documents identified by Mobility Authority as necessary to construct the Roadway Project (the "Project Plans"). Based on the Project Plans and on previous bids submitted to the Mobility Authority to build the Project Plans, Mobility Authority has provided its Engineer's Opinion of Estimated Construction Costs dated August 16, 2013, attached as **Exhibit 2** (the "Cost Estimate"). Developer and Mobility Authority have reviewed and hereby approve the Project Plans and the Cost Estimate. Mobility Authority hereby agrees to pay \$150,000.00 of the total costs of the Roadway Project that are payable to outside contractors for actual construction costs and construction oversight.
3. No later than one day after the effective date of this Agreement, Developer shall pay an additional \$232,310.32 into the escrow account established in accordance with and subject to the Restated and Amended Escrow Agreement attached as **Exhibit 3** to this Agreement (the "Escrow Agreement") as assurance for Developer's payment of that portion of the total estimated cost of the Roadway Project to be paid by Developer. Developer has advised Mobility Authority that

Developer has entered into a certain Site Development Agreement dated March 19, 2013, with Costco Wholesale Corporation (“Costco”) pursuant to which Developer has escrowed funds for, among other things, completion of the Roadway Project (such escrow being referred to herein as the “Costco Escrow”); and that funds from the Costco Escrow may be transferred from the Costco Escrow into the escrow account to be established under the Escrow Agreement.

4. Mobility Authority shall procure and supervise the construction contract for the Roadway Project in accordance with the Procurement Policies established by the Mobility Authority Policy Code. The contract shall require a completion date of 70 days after issuance of a notice to proceed, with liquidated damages payable in the amount of \$1,500.00 for each calendar day the project is not complete. Mobility Authority shall publish the notice of contract letting required under its Procurement Policies no later than one day after:

a. Mobility Authority, Developer, and the escrow agent identified in that agreement (the “Escrow Agent”) have executed the Escrow Agreement, and a duly-executed counterpart original of the Escrow Agreement has been delivered to the Escrow Agent; and

b. the Escrow Agent has received from Developer and holds the \$232,310.32 required to be paid under this Agreement in addition to the \$386,702.16 previously paid to and held by Escrow Agent under the Escrow Agreement, and provides written notice and confirmation to Mobility Authority that Escrow Agent holds Escrowed Funds in a total amount of \$619,012.48.

5. After Mobility Authority has selected a contractor to build the Roadway Project, and based on the actual cost established by the bid submitted by the selected contractor for the Roadway Project (the “Actual Contract Cost”), the amount of funds deposited with the Escrow Agent shall be adjusted as follows:

a. If the Actual Contract Cost is less than the total bid items cost of \$653,262.18 established by the Cost Estimate, no later than three days after signing the construction contract Mobility Authority shall provide written instructions to Escrow Agent to authorize and direct the Escrow Agent to release 66% of the surplus funds to Developer and 34% of the surplus funds to Costco, documenting in reasonable detail Mobility Authority’s calculation of the surplus funds and confirming that the procurement process for the Roadway Project complied with the Mobility Authority’s Procurement Policies. For purposes of this subsection, the amount of surplus funds is calculated by this formula:

$$(\$653,262.18 - \text{Actual Contract Cost}) \times 1.23 = \text{Surplus Funds}$$

b. If the Actual Contract Cost is more than the total bid items cost of \$653,262.18 established by the Cost Estimate, Developer shall pay the additional cost to the Escrow Agent no later than three days after receiving written notice from Mobility Authority of the additional cost, documenting in reasonable detail Mobility Authority’s calculation of the additional cost and confirming that the procurement process for the Roadway Project complied with the Mobility Authority’s Procurement Policies. The additional cost paid by Developer shall be held as escrow funds subject to the Escrow Agreement. For purposes of this subsection, the amount of additional cost is calculated by this formula:

$$(\text{Actual Contract Cost} - \$653,262.18) \times 1.23 = \text{Additional Cost}$$

Mobility Authority is not required to execute a construction contract with the selected contractor for the Roadway Project or to otherwise proceed with the Roadway Project if Developer fails to timely pay the Additional Cost into the escrow account under this section.

c. If a change order to the construction contract is necessary due to (i) unanticipated conditions, (ii) to correct any error or deficiency in the Project Plans, or (iii) at the written request of Developer to Mobility Authority, the payment for that change order shall be made from the escrowed funds. If the projected total cost of that change order and related construction oversight expense exceeds the amount of escrowed funds then held by Escrow Agent, Mobility Authority shall notify Developer of the total additional projected costs that exceed the escrowed funds (the “Developer’s change order expense”), documenting in reasonable detail Mobility Authority’s calculation of the Developer’s change order expense, and confirming the change order is required to complete the Roadway Project in accordance with Project Plans revised as necessary to address a circumstance arising under this subsection. Developer shall pay the Developer’s change order expense to the Escrow Agent no later than ten days after receiving written notice from Mobility Authority under this subsection of the Developer’s change order expense and the reasons therefor, and the payment shall be held by the Escrow Agent as escrowed funds subject to the Escrow Agreement.

d. If a change order is not a Developer’s change order expense as identified under subsection (c) of this section 5, Mobility Authority shall be solely responsible for all of the costs of any change order that it approves under the construction contract for the Road Project, including, without limitation, the costs of supervision and inspection.

e. Liquidated damages paid to the Authority by the contractor or credited by the Authority against payments otherwise due to the contractor shall be applied to actual costs incurred by the Authority for contract oversight and inspection services during the liquidated damages assessment period, in an amount not to exceed \$900.00 per day, with any remaining balance paid to the Escrow Agent to be held as escrowed funds subject to the Escrow Agreement.

6. Mobility Authority shall use best efforts in its oversight of the construction of the Roadway Project to provide reasonable vehicular access from the southbound frontage road for 183A to the Property no later than October 31, 2013, in accordance with the Project Plans. Mobility Authority shall require the contractor awarded the Roadway Project not to unreasonably interfere with the contemporaneous development on the Property and Mobility Authority shall exercise commercially reasonable efforts to enforce such obligation.

7. Mobility Authority may draw upon the funds deposited by Developer into the escrow account to pay its outside contractors who provide services relating to bidding and oversight of the construction contract in an amount not to exceed 8% of the contract price and to pay the contract price for construction of the Roadway Project to the bidder selected for the contract, including change orders, in accordance with the terms and conditions of the Escrow Agreement. Mobility Authority will complete and submit each draw request to Escrow Agent in the form attached as Exhibit 1 to the Escrow Agreement. After the Roadway Project is completed and

accepted by Mobility Authority, and after Mobility Authority has established and paid the authorized expenses described in this section, any funds remaining in the escrow account, including any accrued interest, shall be released and deposited into the Costco Escrow by the Escrow Agent. Mobility Authority shall within a reasonable time after a written request by Developer from time to time furnish Developer with an accounting in reasonable detail of the Actual Contract Cost.

8. Mobility Authority shall keep and maintain records to document and support that each individual draw request paid to Mobility Authority has been used only for an authorized purpose established by Section 7. Records maintained under this subsection shall be made available for review and copying by Developer upon Developer's written request.

9. All of Mobility Authority's expenditures under this Development Agreement shall be subject to audit by Developer, at Developer's request and sole expense.

## **B. DEFAULT; REMEDIES; TERMINATION**

1. Either Party may terminate this Agreement if the other Party defaults in its obligation and, after receiving notice of the default and of the non-defaulting Party's intent to terminate, fails to cure the default no later than five days after receipt of that notice.

2. This Agreement will terminate on the date when all escrowed funds have been disbursed in accordance with the terms of the Escrow Agreement.

## **C. MISCELLANEOUS PROVISIONS**

1. Actions Performable; Venue. Mobility Authority and Developer agree that all actions to be performed under this Agreement are performable in Williamson County, Texas. The parties agree that the exclusive venue for any lawsuit arising out of or relating to this Agreement will be in Williamson County, Texas, and waive the right to sue or be sued elsewhere.

2. Governing Law. Mobility Authority and Developer agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.

3. Complete Agreement; Amendment. This Agreement represents the entire agreement between the parties regarding the Roadway Project and supersedes all oral statements and prior writings relating to this Agreement. This Agreement may not be amended except by an instrument in writing signed by Developer and Mobility Authority.

4. Exhibits. All exhibits and attachments attached hereto are incorporated herein by this reference.

Exhibit 1	-	Roadway Project Illustration
Exhibit 2	-	Engineer's Cost Estimate
Exhibit 3	-	Restated and Amended Escrow Agreement

5. Notice. All notices, demands or other requests, and other communications required or permitted under this Agreement or which any Party may desire to give, shall be in writing (with a copy to Costco) and shall be deemed to have been given on the sooner to occur of (i) receipt by the Party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving Party, or (ii) two days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such Party at the respective addresses set forth below, or such other address as each Party may from time to time designate by written notice to the others as herein required or (iii) facsimile transmission on which standard confirmation has been received by the sending Party:

For the Mobility Authority:

Mike Heiligenstein, Executive Director  
Central Texas Regional Mobility Authority  
3300 N. IH-35, Suite 300  
Austin, TX 78705  
(512) 996-9784 (facsimile)

For the Developer:

CEDAR PARK TOWN CENTER LP  
c/o Mr. Michael Ainbinder  
The Ainbinder Company  
2415 W. Alabama, Suite 205  
Houston, Texas 77098  
(713) 892-5656 (facsimile)

For Costco:

COSTCO WHOLESALE CORPORATION  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Bruce Coffey, Corporate Counsel  
(425) 313-8114 (facsimile)

6. Calculation of Days. Each reference in this Agreement to a day or days refers to a day that is not a Saturday, Sunday, or a legal holiday. If the last day of any period described in this Agreement is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

7. Force Majeure. Whenever a period of time is prescribed by this Agreement for action to be taken by either Party, the Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

8. Assignment. This Agreement may be assigned by Developer. Developer must deliver to Mobility Authority a written acknowledgement from the entity being assigned Developer's position in this Agreement, acknowledging this Agreement and committing to assume all of Developer's obligations included in this Agreement. No assignment of this Agreement shall release Developer from its obligations under this Agreement, but rather Developer and its assignee shall be jointly and severally liable for those obligations.

9. Signature Warranty Clause; Counterparts; Digital Signatures. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of Mobility Authority and Developer, respectively. This Agreement shall be effective upon execution by handwritten signature of each of the Parties in as many counterparts as may be convenient. It shall not be necessary that the signature of all persons required appear on each counterpart. All counterparts shall collectively constitute a single instrument. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the intent of the party or the signatures thereon and thereafter attached to another counterpart identical thereto except having to it additional signature pages. An image of the handwritten signature of any party on this Agreement evidenced and transmitted by electronic means (including email, facsimile, or similar transmission) shall be deemed effective for all purposes.

10. Third Party Beneficiary; Amendments. Costco is a third party beneficiary to this Agreement. This Agreement may be amended only by means of a written amendment signed by all the Parties to this Agreement; provided, however that no amendment shall be made without the prior written consent of Costco. Any purported oral amendment of this Agreement shall be ineffective and invalid.

11. Consent by Costco. Costco joins in the execution of this Restated and Amended Development Agreement to give its consent as provided in Section 10 of the Initial Agreement.

**CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY**

By: \_\_\_\_\_  
Mike Heiligenstein, Executive Director

**CEDAR PARK TOWN CENTER LP**

By: Ainbinder Cedar Park, LLC

By: \_\_\_\_\_  
Michael C. Ainbinder  
Chairman, CEO and Manager

**COSTCO WHOLESALE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit 1 - Roadway Project Illustration**

[on the following two pages]

DRAFT

**Exhibit 2 - Cost Estimate**

DRAFT

Engineer's Opinion of Estimated Construction Costs dated August 16, 2013					HNTB Estimate	
NO.	ITEM	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	COST
1	0500-2001	MOBILIZATION	LS	1	\$63,500.00	\$63,500.00
2	0502-2001	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	3	\$3,750.00	\$11,250.00
3	6834-2002	PORTABLE CHANGEABLE MESSAGE SIGN	EA	1	\$8,500.00	\$8,500.00
4	0354-2017	PLANE & TEXT CONC PAV (0"-2")	SY	14300	\$2.50	\$35,750.00
5	0529-2004	CONC CURB AND GUTTER (TY IIA)	LF	3200	\$21.50	\$68,800.00
6	0530-2010	DRIVEWAYS (CONC)	SY	475	\$85.00	\$40,375.00
7	3268-2003	D-GR HMA (QCQA) TY-A PG64-22	TON	380	\$135.00	\$51,300.00
8	3268-2029	D-GR HMA (QCQA) TY-C SAC-A PG76-22	TON	1600	\$95.50	\$152,800.00
9	0100-2001	PREP ROW	AC	1.27	\$18,500.00	\$23,495.00
10	0110-2003	EXCAVATION (SPECIAL)	CY	134	\$185.00	\$24,790.00
11	0132-2004	EMBANKMENT (FINAL)(DENS CONT)(TY B)	CY	546	\$57.50	\$31,395.00
12	0465-2073	INLET (COMPL)(CURB)(TY4-BC)(5')	EA	4	\$5,750.00	\$23,000.00
13	0465-2074	INLET (COMPL)(CURB)(TY4-BC)(10')	EA	2	\$7,850.00	\$15,700.00
14	0636-2010	REPLACE EXIST ALUM SIGNS (RDSD)	EA	1	\$467.50	\$467.50
15	0644-2056	RELOCATE SM RD SN SUP & AM TY 10BWG	EA	1	\$417.50	\$417.50
16	0644-2070	INS SM RD SN SUP & AM TY10BWG (2)SA (T)	EA	4	\$705.00	\$2,820.00
17	0666-2002	REFL PAV MRK TY I (W) 4" (BRK)(090 MIL)	LF	4390	\$0.45	\$1,975.50
18	0666-2011	REFL PAV MRK TY I (W) 4" (SLD)(090 MIL)	LF	2600	\$0.45	\$1,170.00
19	0666-2023	REFL PAV MRK TY I (W) 6" (SLD)(090 MIL)	LF	475	\$0.85	\$403.75
20	0666-2035	REFL PAV MRK TY I (W) 8" (SLD)(090 MIL)	LF	787	\$2.75	\$2,164.25
21	0666-2041	REFL PAV MRK TY I (W) 12" (SLD)(090 MIL)	LF	260	\$3.50	\$910.00
22	0666-2053	REFL PAV MRK TY I (W) (ARROW)(090 MIL)	EA	14	\$150.00	\$2,100.00
23	0666-2095	REFL PAV MRK TY I (W) (WORD)(090 MIL)	EA	8	\$250.00	\$2,000.00
24	0666-2110	REFL PAV MRK TY I (Y) 4" (SLD)(090 MIL)	LF	3025	\$0.40	\$1,210.00
25	0666-2119	REFL PAV MRK TY I (Y) 6" (SLD)(090 MIL)	LF	470	\$0.70	\$329.00
26	0666-2142	REFL PAV MRK TY II (W) 4" (BRK)	LF	4390	\$0.20	\$878.00
27	0666-2145	REFL PAV MRK TY II (W) 4" (SLD)	LF	2600	\$0.20	\$520.00
28	0666-2149	REFL PAV MRK TY II (W) 6" (SLD)	LF	475	\$0.55	\$261.25
29	0666-2153	REFL PAV MRK TY II (W) 8" (SLD)	LF	787	\$1.65	\$1,298.55
30	0666-2155	REFL PAV MRK TY II (W) 12" (SLD)	LF	260	\$1.90	\$494.00
31	0666-2160	REFL PAV MRK TY II (W) (ARROW)	EA	14	\$45.00	\$630.00
32	0666-2173	REFL PAV MRK TY II (W) (WORD)	EA	8	\$92.50	\$740.00
33	0666-2178	REFL PAV MRK TY II (Y) 4" (SLD)	LF	3025	\$0.20	\$605.00
34	0666-2181	REFL PAV MRK TY II (Y) 6" (SLD)	LF	470	\$0.50	\$235.00
35	0672-2017	REFL PAV MRKR TY II-C-R	EA	65	\$16.50	\$1,072.50
36	0166-2002	FERTILIZER	LB	112.5	\$1.05	\$118.13
37	0164-2009	BROADCAST SEED (TEMP)(WARM)	SY	900	\$0.65	\$585.00
38	0168-2001	VEGETATIVE WATERING	MG	0.02	\$27,100.00	\$542.00
39	0506-2001	ROCK FILTER DAMS (INSTALL)(TY 1)	LF	115	\$16.50	\$1,897.50
40	0506-2009	ROCK FILTER DAMS (REMOVE)	LF	115	\$7.00	\$805.00
41	1122-2037	TEMPORARY SEDIMENT CONTROL FENCE INSTALL	LF	2465	\$2.00	\$4,930.00
42	1122-2038	TEMPORARY SEDIMENT CONTROL FENCE (INLET PROTECTION)	LF	72	\$8.00	\$576.00
43	1122-2057	TEMPORARY SEDIMENT CONTROL FENCE REMOVE	LF	2465	\$0.35	\$862.75
44	690	REMOVAL OF SIDEWALKS	SF	2803	\$5.00	\$14,015.00
45	531	CONCRETE SIDEWALK (4")	SY	305	\$52.00	\$15,860.00
46	531	CONCRETE SIDEWALK (6")	SY	137	\$72.00	\$9,864.00
47	247	FLEXBASE (TYA GR5)	TON	310	\$51.00	\$15,810.00
48	160	TOP SOIL	CY	468	\$30.00	\$14,040.00
						\$653,262.18
						\$150,000.00
						\$503,262.18
						\$75,489.33
						\$40,260.97
						\$619,012.48

&lt;= CTRMA Construction Cost Contribution

&lt;= Developer Construction Cost Contribution

&lt;= 15% CONTINGENCY

&lt;= 8% CEI

&lt;= TOTAL DEVELOPER ESCROW AMOUNT

**Exhibit 3 – Restated and Amended Escrow Agreement**

[on the following eight pages]

DRAFT

**RESTATED AND AMENDED**  
**ESCROW AGREEMENT**

This Restated and Amended Escrow Agreement (“Escrow Agreement”) is effective August \_\_\_\_\_, 2013, between CEDAR PARK TOWN CENTER LP, a Texas limited partnership (“Developer”), the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Mobility Authority”), a Texas political subdivision, and VERITAS TITLE PARTNERS, L.P. (“Veritas”), as the Escrow Agent. Developer, Mobility Authority, and Veritas may be referred to collectively in this Escrow Agreement as the “Parties,” and individually as a “Party.”

**RECITALS**

**WHEREAS**, Developer, Mobility Authority, and Veritas are parties to that certain Escrow Agreement effective June 24, 2013, under which Veritas has received and holds in the escrow account established under that Escrow Agreement the sum of \$386,702.16 (the “Existing Escrow Funds”); and

**WHEREAS**, Developer and Mobility Authority have entered into a Restated and Amended Development Agreement effective August \_\_\_\_\_, 2013 (the “Development Agreement”) to fund certain roadway and related improvements described in that agreement (the “Roadway Project”);

**WHEREAS**, Developer has agreed in the Development Agreement to deposit additional funds into the escrow account along with the Existing Escrow Funds as a source of funds to be used by Mobility Authority to build the Roadway Project; and

**WHEREAS**, Veritas has agreed to serve as the escrow agent for Developer and Mobility Authority in accordance with the terms and conditions of this Escrow Agreement.

**NOW, THEREFORE**, for Parties agree as follows:

1. **Incorporation of Recitals and Findings.** The Recitals above are a part of this agreement. Capitalized words and phrases that are not defined in this Escrow Agreement have the meaning given in the Development Agreement.
2. **Appointment of Escrow Agent.** Developer and Mobility Authority hereby appoint Veritas to act as escrow agent (“Escrow Agent”) and to act as their agent with respect to the Escrowed Items, and Escrow Agent hereby accepts such appointment. The Escrow Items shall include the Escrow Agreement and the Escrowed Funds as set forth in Sections 3 and 4 below.
3. **Deposit of Escrow Agreement with Escrow Agent.** No later than one day after all Parties have signed this Escrow Agreement, Developer shall deliver one duly-executed counterpart original of this Escrow Agreement to Escrow Agent.
4. **Deposit of Escrowed Funds.**
  - (a) Concurrently with the delivery of the duly-executed counterpart original of this Escrow Agreement to Escrow Agent, Developer shall deposit with Escrow Agent the sum of

\$232,310.32 (the “New Escrow Funds”). Escrow Agent shall not be responsible for the collection of the New Escrow Funds and may fully rely on Developer to assure the New Escrow Funds are timely deposited.

(b) Escrow Agent shall keep the Existing Escrow Funds, the New Escrow Funds, and any additional funds received from Developer under Section A.5 of the Development Agreement (collectively, the “Escrowed Funds”) in one or more interest-bearing accounts under the name and tax identification number of Developer and insured by the FDIC. Escrow Agent shall not be liable in the event of loss of the Escrowed Funds due to failure of the bank or savings and loan institution.

(c) Any interest which accrues on the Escrowed Funds shall be paid to the person/entity receiving any amounts remaining in the Escrow at the close of the Escrow, in accordance with the terms of this Escrow Agreement.

(d) Developer has advised Mobility Authority that Developer has entered into a certain Site Development Agreement dated March 19, 2013 with Costco Wholesale Corporation (“Costco”) pursuant to which Developer has escrowed funds with Escrow Agent for, among other things, completion of the Roadway Project (such escrow being referred to herein as the “Costco Escrow”); and that a portion of the Escrowed Funds will be transferred from the Costco Escrow and the remainder will be deposited by Costco.

5. **Escrow Term.** The Escrow shall close when all of the Escrowed Funds are disbursed in accordance with Sections 6 and 7 below, as applicable.

6. **Disbursement of Escrowed Funds to Costco Escrow.** Escrow Agent is instructed to disburse funds from the Escrowed Funds in accordance with the following procedures:

(a) If Escrow Agent receives an authorization and instructions from Mobility Authority to disburse surplus funds under Section A.5.a. of the Development Agreement, Escrow Agent shall disburse 66% of the authorized amount directly to Developer and 34% of the authorized amount directly to Costco no later than ten days after receipt of those instructions.

(b) Escrow Agent shall disburse any funds that remain in the Escrow Account directly into the Costco Escrow no later than ten days after receipt of notice from Mobility Authority to Escrow Agent and to Developer that the Roadway Project has been completed and accepted by Mobility Authority, and that all funds eligible for disbursement to Mobility Authority under Section 7 have been disbursed to Mobility Authority.

7. **Disbursement of Escrowed Funds to Mobility Authority.** Escrow Agent is instructed to disburse payments from the Escrowed Funds to Mobility Authority in accordance with the following procedures:

(a) Mobility Authority will submit a draw request to Escrow Agent by completing and using the form attached as Exhibit 1. A true and correct copy of each draw request submitted to the Escrow Agent shall be submitted contemporaneously by Mobility Authority to Developer using the same method of notice Mobility Authority uses under Section 10(d) to submit the draw request to Escrow Agent.

(b) The Escrow Agent shall disburse the draw amount to Mobility Authority or its trustee no later than five days after the date Escrow Agent receives a draw request. The draw request shall be paid in the dollar amount actually submitted in writing by Mobility Authority to the extent sufficient Escrowed Funds are available.

8. **Resignation of Escrow Agent.** Escrow Agent reserves the right to resign hereunder, upon 20 days prior written notice to Mobility Authority and Developer. In the event of said resignation, and prior to the effective date thereof, either (a) Mobility Authority and Developer, by joint written notice to Escrow Agent, shall designate a successor escrow agent to assume the responsibilities of Escrow Agent under this Escrow Agreement, and Escrow Agent shall immediately deliver all of the Escrowed Funds in Escrow Agent's possession to such successor escrow agent, or (b) if Mobility Authority and Developer do not agree on a successor escrow agent, or if they fail to deliver to Escrow Agent such written notice, Escrow Agent shall be entitled to interplead the Escrowed Funds into a court with proper jurisdiction in Williamson County, Texas.

9. **Escrow Fee.** Escrow Agent waives any right to receive a fee in connection with its services under this Escrow Agreement.

10. **Miscellaneous.**

(a) Time is of the essence with respect to each and every provision of this Escrow Agreement and in the performance, occurrence, fulfillment or satisfaction of each and every term and condition of the escrow created hereby.

(b) Each reference in this Agreement to a day or days refers to a day that is not a Saturday, Sunday, or a legal holiday. If the last day of any period described in this Agreement is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) Escrow Agent shall be entitled to assume that documents and writings that are deposited into escrow or that are received in the course of carrying out its instructions hereunder are genuine and are in fact signed by the person or persons purporting to execute them, and Escrow Agent is entitled to act upon and use such documents and writings, unless and until Escrow Agent has actual knowledge of facts or circumstances that would cause a reasonably prudent person to suspect that they are not genuine. Escrow Agent shall not be responsible or liable for the accuracy, validity or appropriateness of any document or request submitted to it, and may fully rely on such document or request in acting or proceeding in accordance with this Escrow Agreement.

(d) All notices, demands, draw or other requests, and other communications required or permitted hereunder or which any Party may desire to give, shall be in writing (with a copy to Costco) and shall be deemed to have been given on the sooner to occur of (i) receipt by the Party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving Party, or (ii) two days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such Party at the respective addresses set forth

below, or such other address as each Party may from time to time designate by written notice to the others as herein required, or (iii) facsimile or electronic mail transmission (the latter of scanned documents in formats such as .pdf or .tif) for which confirmation of receipt by the other parties has been obtained by the sending Party:

Escrow Agent:

Veritas Title Partners, L.P.  
Attn: Sandra Paige  
2415 W. Alabama, Suite 203  
Houston, Texas 77098  
(713) 482-2802  
(713) 482-2840 (facsimile)  
Email: [sp Paige@veritastitlepartners.com](mailto:sp Paige@veritastitlepartners.com)

Developer:

Cedar Park Town Center LP  
c/o Mr. Michael Ainbinder  
The Ainbinder Company  
2415 W. Alabama, Suite 205  
Houston, Texas 77098  
(713) 892-5600  
(713) 892-5656 (facsimile)  
Email: [mca@ainbinder.com](mailto:mca@ainbinder.com)

Mobility Authority:

Central Texas Regional Mobility  
Authority Attn: Wes Burford, Director of Engineering  
3300 N. IH-35, Suite 300  
Austin, Texas 78705  
(512) 996-9778  
(512) 996-9784 (facsimile)  
Email: [wb Burford@ctrma.org](mailto:wb Burford@ctrma.org)

Costco:

Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Bruce Coffey, Corporate Counsel  
(425) 313-8114 (facsimile)  
Email: [Bcoffey@Costco.com](mailto:Bcoffey@Costco.com)

(e) Escrow Agent shall not be obligated to determine or resolve conflicting demands or claims to funds, documents or items deposited in escrow or conflicting demands or claims concerning the validity or interpretation of, or performance under, this Escrow Agreement. Until such conflicting demands or claims have been determined, resolved or eliminated by written agreement of the Parties, a valid amendment to this Escrow Agreement or a final order of judgment of the court of competent jurisdiction, Escrow Agent shall be authorized to (i) refrain from carrying out its duties hereunder, and to retain in escrow any funds, documents or items that are the subject of the conflict or that may be dependent on or affected by the resolution of the conflict or (ii) interplead the subject matter of this Escrow into any court of competent jurisdiction and the act of such interpleader shall immediately relieve Escrow Agent of its duties,

liabilities and responsibilities hereunder. In that regard, the Parties hereto expressly acknowledge Escrow Agent's right to interplead the Escrowed Items into a court of competent jurisdiction in Williamson County, Texas, as provided by this Escrow Agreement.

(f) Costco is a third party beneficiary to this Agreement. This Escrow Agreement may be amended only by means of a written amendment signed by all the Parties to this Escrow Agreement; provided, however that no amendment shall be made without the prior written consent of Costco. Any purported oral amendment of this Escrow Agreement shall be ineffective and invalid.

(g) This Escrow Agreement may be executed in counterparts, each of which individually shall be an original and all of which together shall constitute but one and the same document. Any signature page to any counterpart of this Escrow Agreement may be detached from such counterpart without impairing the legal effect of the signature thereon and thereafter attached to another counterpart identical thereto except having to it additional signature pages. An image of the handwritten signature of any party on this Escrow Agreement evidenced and transmitted by electronic means (including email, facsimile, or similar transmission) shall be deemed effective for all purposes.

(h) The captions contained in this Escrow Agreement are for purposes of identification only and shall not be considered in construing this Escrow Agreement.

(i) This Escrow Agreement shall be governed by and construed in accordance with the laws in the State of Texas. The Parties agree that the exclusive venue for any lawsuit arising out of or relating to this Escrow Agreement will be in Williamson County, Texas, and waive the right to sue or be sued elsewhere.

(j) This Escrow Agreement shall be binding on the Parties hereto and their respective heirs, executives, administrators, successors and assigns when all Parties have executed and delivered a counterpart hereof.

(k) Each Party represents that it has full power and authority rightfully to execute and deliver this Escrow Agreement and to perform the actions contemplated hereby.

(l) Costco joins in the execution of this Restated and Amended Escrow Agreement to give its consent as provided in Section 10(f) of the Escrow Agreement effective June 24, 2013.

11. **Conflict with Development Agreement.** In the event of a conflict between any term, provision or condition of the Development Agreement and this Escrow Agreement, the terms, conditions and provisions of the Development Agreement shall govern with respect to Developer and Mobility Authority. Escrow Agent shall be bound by only the terms and stipulations of this Escrow Agreement.

12. **Effective Date.** The Effective Date shall be the date the last of the Parties shown below executes this Escrow Agreement.

13. **Term.** This Escrow Agreement shall terminate when all Escrowed Funds have been disbursed in accordance with the terms hereof.

Executed to be effective as of the Effective Date.

**MOBILITY AUTHORITY**

**CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY**

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

Mike Heilligenstein  
Executive Director

Date: \_\_\_\_\_

**DEVELOPER:**

**CEDAR PARK TOWN CENTER LP**

By: Ainbinder Cedar Park, LLC

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

Michael C. Ainbinder  
Chairman, CEO and Manager

**ESCROW AGENT:**

**VERITAS TITLE PARTNERS, L.P.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COSTCO WHOLESALE CORPORATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT 1**

### **DRAW REQUEST**

Date: \_\_\_\_\_

Veritas Title Partners, L.P.  
Attn: Sandra Paige  
2415 W. Alabama, Suite 203  
Houston, Texas 77098

Re: Escrow Agreement by and between CEDAR PARK TOWN CENTER LP, a Texas limited partnership (“Developer”), the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Mobility Authority”), a Texas political subdivision, and VERITAS TITLE PARTNERS LP (“Escrow Agent”).

To Whom It May Concern:

In connection with the above captioned escrow, the undersigned hereby requests disbursement from the captioned escrow as follows:

\$ \_\_\_\_\_ draw request for Payment Period: \_\_\_\_\_, 2013.

\$ \_\_\_\_\_ Amount Remaining in Escrow following Current Draw.

The undersigned certifies that these funds are requested exclusively for the purpose of:

1. Reimbursement of costs paid by Mobility Authority to HNTB Corporation, its general engineering consultant, for services relating to procurement and oversight of the construction contract for the Roadway Project.
2. Reimbursement of costs paid by Mobility Authority to \_\_\_\_\_, its \_\_\_\_\_ for services relating to procurement and oversight of the construction contract for the Roadway Project.
3. Reimbursement of costs paid by Mobility Authority to \_\_\_\_\_, the general contractor selected by Mobility Authority, for costs and charges incurred under the contract to construct the Roadway Project, including any change orders authorized under that contract.

The undersigned further certifies that:

1. all work described by this draw request has been undertaken in compliance with applicable local, state, and federal laws and regulations; and

2. Mobility Authority has provided a true and correct copy of this draw request to Developer and to Costco contemporaneously with submission of this draw request to the Escrow Agent, using the same method of notice it used to give notice of this draw request to Escrow Agent.

True and correct records and documents are available and in the possession of Mobility Authority to document the expenses included in this draw request.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

cc: CEDAR PARK TOWN CENTER, L.P.  
c/o Mr. Michael Ainbinder  
The Ainbinder Company  
2415 W. Alabama, Suite 205  
Houston, Texas 77098

Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, Washington 98027  
Attention: Bruce Coffey, Corporate Counsel