



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #10 SUMMARY

Approve an agreement with the City of Leander relating to financing and construction of improvements to the 183/183A intersection.

Strategic Plan Relevance: Regional Mobility

Department: Engineering

Associated Costs: \$1,250,000 (to be paid by City of Leander to Mobility Authority)

Funding Source: City of Leander

Board Action Required: Yes

Description of Matter: The City of Leander is party to a development agreement with Crescent Leander LLC ("Crescent"). Crescent owns and intends to develop approximately 490 acres east of the 183A/183 intersection. In the development agreement, Crescent has agreed to contribute \$1,250,000 towards improvements to the 183A/183 intersection which the Mobility Authority is designing and will build.

The proposed interlocal agreement with the City of Leander establishes the City's obligation to request the \$1,250,000 from Crescent and pay that amount to the Mobility Authority. The payment must be made before the Mobility Authority publishes its notice of bid solicitation for a contract to build the Project.

Reference documentation: Draft Resolution
Draft Interlocal Agreement

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. 14-___

**APPROVING AN AGREEMENT WITH THE CITY OF LEANDER RELATING TO
FINANCING AND CONSTRUCTION OF IMPROVEMENTS TO THE 183/183A
INTERSECTION.**

WHEREAS, by Resolution No. 11-139, dated December 7, 2011, the Board of Directors authorized the Executive Director to finalize and execute a Pass-Through Agreement for Payment of Pass-Through Tolls by the Department with the Texas Department of Transportation (“TxDOT”) relating to Mobility Authority improvements to the intersection of the 183A Turnpike and US 183 (the “Project”), and that agreement was executed and became effective on January 19, 2012; and

WHEREAS, additional funding for the Project is available in the amount of a \$1,250,000 contribution by Crescent Leander LLC to the City of Leander, pursuant to that certain Crescent Leander Development and Reimbursement Agreement between those two parties; and

WHEREAS, the Executive Director recommends Board approval of a proposed interlocal agreement with the City of Leander to establish the process and timing of payment to the Mobility Authority of the contribution from Crescent Leander LLC and the City of Leander, a copy of which is attached as Exhibit 1 to this resolution.

NOW THEREFORE, BE IT RESOLVED that the proposed interlocal agreement with the City of Leander is hereby approved; and

BE IT FURTHER RESOLVED that the Executive Director may finalize and execute the proposed interlocal agreement in the form or substantially the same form as shown on Exhibit 1 on behalf of the Mobility Authority.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of April, 2014.

Submitted and reviewed by:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 11-140
Date Passed: 12/7/11

EXHIBIT 1 TO RESOLUTION 11-140
PROPOSED INTERLOCAL AGREEMENT

[on the following 4 pages]

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the “Agreement”) is effective as of May _____, 2014, and is between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (the “Mobility Authority”) and the CITY OF LEANDER (the “City”), political subdivisions of the State of Texas (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Mobility Authority 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 City is a home rule city and municipal corporation; 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 City has entered into a Development and Reimbursement Agreement (the “Development Agreement”) with Crescent Leander, TX, LLC (the “Developer”) and Reinvestment Zone Number One, City of Leander, Texas (the “Zone”) concerning the development of approximately 491 acres owned by the Developer and located in the vicinity of the intersection of 183A and U.S. Highway 183 (the “Developer’s Property”); and

WHEREAS, the Developer has agreed in the Development Agreement to pay \$1,500,000 towards the design and construction of the Project (\$250,000 of which is credited in the Development Agreement based on prior expenditures by Developer, leaving a \$1,250,000 contribution remaining to be paid by Developer); and

WHEREAS, the Parties have agreed that it would be to their mutual benefit for the Mobility Authority to design and construct the Project with the City paying a portion of the design and construction costs for the Project by paying to the Mobility Authority the remaining \$1,250,000 contribution from the Developer to the City pursuant to the Development Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The recitals set forth above are incorporated into this Agreement for all purposes and are found by the Parties to be true and correct. The Parties have further found and determined that each Party has authorized and approved the Agreement by resolution or order adopted by its respective governing body, and that this Agreement will be in full force and effect when approved by each Party.

2. 183A/183 Intersection Improvements. The Project consists of improvements to the intersection of 183A and U.S. Highway 183 and to the initial entryway from 183A/183 into the Developer’s Property, including both northbound and southbound turn-arounds and traffic

signals on the northbound 183A frontage road and the southbound 183A frontage road, consistent with the definitions for “183A/183 Intersection” and “Initial Entryway” set forth in Sections 3.4(a) and 3.4(b), respectively, of the Development Agreement. The Mobility Authority agrees to manage the design, contract procurement, and construction of the Project through its staff and vendors under contract with the Mobility Authority.

3. Payment Obligation of the City. The City agrees to make a single payment of \$1,250,000 to the Mobility Authority as its sole contribution towards the total cost of developing and completing the Project (the “Project Costs”).

4. Timing of Payment. No later than 90 days before the date the Mobility Authority anticipates publishing its notice of bid solicitation for the construction contract for the Project (the “90 Day Notice”), the Mobility Authority shall provide written notice to the City that it anticipates publishing that notice of bid solicitation. No later than five business days after the 90 Day Notice is provided to the City, the City, through its City Engineer, shall provide to Developer the written notice required by Section 4.4(b) of the Development Agreement, notifying the Developer that the Developer’s remaining \$1,250,000 contribution is needed and due to be paid to the City no later than 60 days after the date of the City’s written notice to Developer. The City shall make its \$1,250,000 payment to the Mobility Authority no later than 75 days after the 90 Day Notice is provided to the City; provided that the City has received the \$1,250,000 payment from the Developer. The Mobility Authority has no obligation to publish its notice of bid solicitation for the construction contract for the Project until the City has paid the \$1,250,000 in funds required by this Agreement. If the Project is not completed by December 31, 2015, the Mobility Authority shall refund the \$1,250,000 payment to the City.

5. Funding Obligation of the Mobility Authority. The Mobility Authority will pay, from its own funds or from funds obtained from sources other than the City, all Project Costs incurred that exceed the \$1,250,000 payment from the City.

6. Term and Termination. Subject to the following, this Agreement shall be effective as of the date first written above and shall continue in force and effect until the first to occur of the following events: (a) the Project is completed; or (b) the Parties mutually agree to terminate this Agreement.

7. Notices. All notices, demands or other requests, and other communications required or permitted under this Agreement or which any Party may desire to give to the other Party shall be in writing and shall be deemed to be given on the date of receipt by the Party to whom the notice is either (i) hand-delivered, with written receipt of the notice provided by the receiving Party, or (ii) delivered by facsimile or electronic mail transmission (the latter of scanned documents in formats such as .pdf or .tif) for which a confirmation of receipt by the receiving Party has been obtained by the sending Party, at the respective addresses set forth below, or at such other address as a Party may from time to time designate by written notice to the other Party as herein required:

MOBILITY AUTHORITY: Mike Heiligenstein, Executive Director
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, TX 78705

(512) 966-9784 (facsimile)
Email address: mheiligenstein@ctrma.org

WITH COPY TO: Andrew Martin, General Counsel
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, TX 78705
(512) 225-7788 (facsimile)
Email address: amartin@ctrma.org

CITY: Kent Cagle, City Manager
City of Leander
200 West Willis Street
Leander, TX 78641
(512) 259-1605 (facsimile)
Email address: kcagle@leandertx.gov

WITH A COPY TO: Paige Saenz, City Attorney
City of Leander
223 W. Anderson, Suite A-105
Austin, TX 78752
(512) 323-5773 (facsimile)
Email address: paige@cityattorneytexas.com

8. Calculation of Days. Unless otherwise specified, each reference in this Agreement to a day or days refers to a calendar day; however, if the last day of any period described in this Agreement is a Saturday, Sunday, or legal holiday observed by either Party, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday observed by either Party.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Venue. The parties agree that all disputes that arise out of this Agreement are governed by the laws of the State of Texas and venue for all purposes herewith shall be in Williamson County, Texas.

15. Assignment. Except as otherwise provided in this Agreement, a party may not assign this Agreement or subcontract the performance of services without first obtaining the written consent of the other party.

16. 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.

The Parties are signing this agreement to be effective on the date stated in the introductory clause.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____
Mike Heiligenstein, Executive Director

CITY OF LEANDER

By: _____
Kent Cagle, City Manager