



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #3 SUMMARY
Monday, August 24, 2015

Approve the financial assistance agreement with the Texas Department of Transportation for funding to develop and construct the 183 South (Bergstrom Expressway) Project.

Strategic Plan Relevance: Regional Mobility Initiative
Department: Engineering / Finance / Law
Associated Costs: N/A
Funding Source: N/A
Board Action Required: Yes

Description of Matter:

By Resolution No. 15-008 enacted January 28, 2015, the Board of Directors authorized filing applications for financial assistance with the Texas Department of Transportation (TxDOT) to develop and build the 183 South Project (the Project). The resolution also authorized the Executive Director to negotiate any agreements required to obtain financial assistance from TxDOT.

On July 30, 2015, the Texas Transportation Commission gave final approval for financial assistance to the Mobility Authority for the Project in the form of a grant of up to \$143,444,248, plus the value of the right-of-way to be transferred by TxDOT to the Mobility Authority, and including funding to reimburse Project costs incurred by the Mobility Authority since February 6, 2014, under an Advance Funding Agreement with TxDOT. Negotiations on the final terms and conditions of the Financial Assistance Agreement between TxDOT and the Mobility Authority (the "FAA") were completed on August 14, 2015. The Executive Director recommends Board approval of the proposed FAA.

Reference: Draft Resolution; proposed FAA attached as Exhibit 1
Contact: Andrew Martin, General Counsel

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

RESOLUTION NO. 15-___

**APPROVE THE FINANCIAL ASSISTANCE AGREEMENT WITH THE TEXAS
DEPARTMENT OF TRANSPORTATION FOR FUNDING TO DEVELOP AND
CONSTRUCT THE 183 SOUTH (BERGSTROM EXPRESSWAY) PROJECT.**

WHEREAS, by Resolution No. 15-008 enacted January 28, 2015, the Board of Directors authorized the Executive Director to file applications with the Texas Department of Transportation (“TxDOT”) for financial assistance to develop and construct the 183 South (Bergstrom Expressway) project and to negotiate the terms of funding agreements and related documents, subject to final approval by the Board of Directors; and

WHEREAS on July 30, 2015, the Texas Transportation Commission approved a grant of financial assistance by TxDOT in the amount of \$143,444,248, plus the value of the 183 South right-of-way to be transferred from TxDOT to the Authority (the “Grant”); and

WHEREAS, the financial assistance agreement for the Project proposed by and negotiated with TxDOT in its final form and as recommended by the Executive Director is attached as Exhibit 1; and

WHEREAS, the Board incorporates and adopts by reference, as additional recitals to this resolution, all recitals set forth in the financial assistance agreement attached as Exhibit 1.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby accepts the Grant and approves the financial assistance agreement attached as Exhibit 1; and

BE IT FURTHER RESOLVED that the Board hereby authorizes the Executive Director to execute on behalf of the Mobility Authority the financial assistance agreement in the form or substantially the form attached as Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of August, 2015.

Submitted and reviewed by:

Approved:

Andrew Martin, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors

**TEXAS DEPARTMENT OF TRANSPORTATION GRANT
TO CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
FOR US 183 SOUTH - BERGSTROM EXPRESSWAY**

This Agreement is made by and between the Texas Department of Transportation, an agency of the State of Texas (“TxDOT”), and the Central Texas Regional Mobility Authority, a political subdivision of the State of Texas (the “Authority”), for the purpose of providing financial assistance in connection with the development and construction of the proposed US 183 South-Bergstrom Expressway in Travis County.

RECITALS

The parties acknowledge the following:

- A. On September 3, 2002, Travis and Williamson Counties (the “Counties”) petitioned the Texas Transportation Commission (the “Commission”) for authorization to form the Central Texas Regional Mobility Authority pursuant to provisions of the Texas Transportation Code; and
- B. In Minute Order No. 109052 adopted by the Commission on October 31, 2002, the Commission authorized the creation of the Authority; and
- C. The Authority now operates pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 Texas Administrative Code §26.11 *et seq.* (the “RMA Rules”), as well as its own policies and procedures; and
- D. The Authority is charged with funding and developing transportation projects throughout the region to provide innovative transportation solutions, promote economic development, and improve the quality of life for residents of the region; and
- E. TxDOT has been participating in the Authority’s development of the Bergstrom Expressway Project (the “Project”), an approximately eight (8) mile project to add three tolled lanes and three improved non-tolled frontage road lanes in each direction within the existing US 183 corridor between US 290 and SH 71, two tolled direct connectors that will connect eastbound SH 71 to northbound Bergstrom Expressway and southbound Bergstrom Expressway to westbound SH 71, improvements on SH 71 adjacent to US 183, and a proposed sidewalk and shared-use path and an outside bike lane within the right of way adjacent to the roadway, all as is more fully described and depicted on Attachment “A.”
- F. The only portion of the Project that will be tolled is the added capacity, and at a minimum the same amount of non-tolled capacity that exists within the corridor at the time construction begins will be maintained within the corridor.
- G. The Project is located within the jurisdiction of the Authority, and is subject to the “primacy” provisions set forth in Chapter 373 of the Texas Transportation Code; and
- H. Chapter 373 of the Texas Transportation Code grants the Authority the first option to develop, finance, construct, and operate the Project; and

I. Pursuant to Resolution No. 14-023 passed on March 26, 2014, the Board of Directors of the Authority (the “Board”) elected to exercise its option to develop, finance, construct, and operate the Project.

J. TxDOT and the Authority entered into an Advance Funding Agreement for the Project, effective as of February 6, 2014, and amended as of August 15, 2014, providing for the funding and performance of certain preliminary engineering and other preconstruction services related to the Project and the Project corridor (the “AFA”).

K. On June 18, 2015, the Authority submitted an amended request, pursuant to 43 Texas Administrative Code Sec. 27.50, et seq. (the “Financial Assistance Rules”), for financial assistance in the form of a grant in the amount of \$143,444,248, plus the value of the right-of-way which has been requested to be transferred from TxDOT to the Authority (the “Grant”), including funding to be used to reimburse costs incurred by the Authority under the AFA, with the proceeds of the Grant to be used to fund a portion of the costs of developing, designing, and constructing the Project.

L. TxDOT may participate, through the expenditure of money from any source, in the acquisition, construction, maintenance, or operation of a toll facility of a public entity, under Article III, Section 52-b of the Texas Constitution and Texas Transportation Code §222.103.

M. TxDOT may provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project of the Authority on terms agreed on by TxDOT and the Authority, under Section 370.301 of the RMA Act.

N. The Texas Transportation Commission (the “Commission”), in Minute Order 114287 dated June 25, 2015, and Minute Order 114316 dated July 30, 2015, pursuant to its constitutional and statutory authority and the Financial Assistance Rules, gave preliminary and final approval of the request submitted by the Authority for the Grant in the amount of up to \$143,444,248 from the State Highway Fund in the form of certain funds allocated in the Unified Transportation Program (the “UTP”), plus the value of the right-of-way which has been requested to be transferred from TxDOT to the Authority (the “Right-Of-Way”), all to be used for the Project, and authorized the Executive Director of TxDOT to enter into a financial assistance agreement with the Authority. The Grant includes the following:

1. Category 2 Funds. The UTP allocates \$100,000,000 of Category 2 funds for the Project, which was previously allocated by the Capital Area Metropolitan Planning Organization. The Commission previously granted \$4,400,000 of the Category 2 funds to the Authority for the project in the form of a grant under a financial assistance agreement dated February 9, 2011, authorized by Minute Order 112443, dated September 30, 2010, leaving a total of \$95,600,000 available under this UTP allocation.

2. Category 7 Funds. The UTP allocates \$21,794,248 in Category 7 funds for the Project, which was previously allocated by the Capital Area Metropolitan Planning Organization. Some of these Category 7 Funds have been disbursed to the Authority under the AFA, which provides for Federal Participation of \$20,230,000 and State Participation of in-kind services of \$1,564,248, for a total of \$21,794,248.

3. Category 12 Funds. The UTP allocates \$26,050,000 in Category 12 funds for the Project.

4. Right of Way. Texas Transportation Code §373.101 requires the Commission and TxDOT to assist a local toll project entity in the development, financing, construction, and operation of a toll project for which the local toll project entity has exercised its option to develop, finance, construct, and operate the project by allowing the local toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project. Pursuant to Section 373.101, and subject to Commission approval, the Authority has requested that the right-of-way associated with the project's tolled mainlanes and direct connectors be removed from the state highway system and transferred to the Authority. Texas Transportation Code §373.102 requires the Authority to reimburse TxDOT for its costs to acquire right-of-way transferred to the local toll project entity, but authorizes the Commission or TxDOT to waive the requirement of reimbursement. The Authority has requested that the Commission waive the requirement of reimbursement for the Right-Of-Way that is expected to be transferred to the Authority after the scope of the Right-Of-Way is determined and the Commission approves the transfer, to be designated as a grant of the value of the Right-Of-Way once it is transferred.

O. On August 24, 2015, the Authority's Board of Directors (the "Board") accepted the Grant and, in Resolution No. 15-___, authorized the Executive Director of the Authority to enter into this Agreement with TxDOT.

AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

1. Use of Grant Funds.

a. TxDOT will provide financial assistance to the Authority, in the form of a grant, in an amount not to exceed \$143,444,248 consisting of the Category 2 Funds, Category 7 Funds, and Category 12 Funds as described herein, to be provided on a reimbursement basis, plus the value of the Right-Of-Way which has been requested to be transferred from TxDOT to the Authority (subject to Commission approval), all to be used for the development and construction of the Project in accordance with this Agreement. This funding is committed by TxDOT and is not subject to future discretionary actions of TxDOT or the Commission. The parties recognize that this funding commitment is an integral part of the overall plan of finance for the Project. The parties further recognize and acknowledge that the funds committed herein may be applied to reimburse Project costs incurred since February 6, 2014 (the effective date of the AFA), in anticipation of the receipt of those funds.

b. Project costs paid or reimbursed by the Authority using funds granted under this Agreement shall be paid or reimbursed in accordance with applicable policies of the Authority, the Financial Assistance Rules, and other applicable state and federal laws, including the

applicable requirements of OMB Circular A-87 (now at 2 CFR Part 225 - Cost Principles for State, Local, and Indian Tribal Governments).

c. The Category 7 Funds shall be governed by both the AFA and this Agreement, provided that this Agreement shall control in the event of any conflict between the AFA and this Agreement. Any funds disbursed from TxDOT to the Authority for the Project under the AFA prior to the effective date of this Agreement shall be treated as if they were disbursed under, and in compliance with, this Agreement.

2. Availability of Grant Funds. All Grant funds governed by this Agreement that have not been provided to the Authority as of the effective date of this Agreement are available for disbursement by TxDOT, provided that the Authority is in compliance with the terms of this Agreement and all prerequisites for the disbursement of funds are satisfied, including authorizations for the use of federal funds by the Federal Highway Administration.

3. Disbursement of Grant Funds.

a. The Authority will deliver to TxDOT prior to each disbursement a certificate in which the Authority accounts for all Grant funds disbursed under this agreement and certifies that the disbursement, when added to the amount of all prior disbursements under this Agreement, will not exceed the total amount of funding authorized under this Agreement.

b. Funds to be made available pursuant to this Agreement shall be disbursed within thirty (30) days of receipt and formal acceptance by TxDOT of a request for reimbursement from the Authority in a format acceptable to TxDOT which complies with the requirements in this Agreement, including those prescribed in Attachment "B" to this Agreement, and which shall also include the following:

- i. the amount requested;
- ii. a description of the use of the funds requested; and
- iii. copies of proposals, invoices, fee statements, or other documentation showing the intended use of the funds requested.

c. TxDOT shall have the right to deny all or part of a request for funds proposed to be used for purposes not authorized by this Agreement or due to a lack of adequate documentation. In either event, the Authority will have the right to submit additional information to clarify the use of funds requested or to provide any missing documentation. The parties will use their best efforts to resolve any disputes over the requested use of funds in a manner which recognizes the need for the Authority to advance the Project and meet its obligations.

d. The Authority shall submit to TxDOT an annual budget of Project costs payable from the Grant funds for the upcoming fiscal year of the Authority that includes monthly estimates of expenditures, such budget and cash flows to be in a form and in sufficient detail as may be reasonably required by TxDOT (the "Budget"). If the Authority determines that it will

incur costs that were not included in the Budget, the Authority shall provide a revised Budget to TxDOT.

e. TxDOT has thirty (30) calendar days from receipt of a revised Budget to notify the Authority in writing of TxDOT's approval of the revised Budget. Failure to notify the Authority of approval or disapproval of the Budget within thirty (30) calendar days shall be considered deemed approval of the Budget. Budget approval by TxDOT is conditioned on verification by TxDOT that the anticipated Grant disbursements can be made in the anticipated timeframe.

f. If TxDOT disapproves the revised Budget it shall specify, in writing (issued within the initial thirty (30) calendar day review period) the reasons for disapproval. The Authority may resubmit the revised Budget in a manner which addresses the issues raised by TxDOT. TxDOT shall have ten (10) business days from receipt of the resubmittal to review and approve, or disapprove, of the resubmittal. If TxDOT disapproves the resubmittal, it shall specify, in writing (issued within the ten (10) business day review period) the reasons for disapproval. Additional resubmittals will be processed in the same manner.

g. To the extent funds disbursed hereunder are utilized to procure tangible work product consistent with the authorized purposes under this Agreement, TxDOT shall have the right to review such work product as a condition to making a requested disbursement.

4. Reporting Requirements. The Authority shall provide the following information to TxDOT within the time frames prescribed herein:

a. a Budget, no later than three months prior to the start of the Authority's fiscal year;

b. the Authority's annual audited financial statements, no later than thirty (30) days after acceptance of the statements by the Authority's Board of Directors;

c. if applicable, any other annual financial information and notices of material events disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission relating to any publicly-offered financing for the Project, no later than ten (10) days after disclosure; and

d. a written report detailing specific expenditures made or reimbursed with Grant disbursements during the previous Fiscal Year, no later than thirty (30) days after the end of the Fiscal Year.

e. The Authority will maintain transaction level expenditure information relating to expenditures paid or reimbursed with funds provided under this Agreement, and will provide, on a quarterly basis, a written report prepared by its General Engineering Consultant detailing the status of Project construction and the specific use of the granted funds during the previous quarter, including without limitation the use of those funds to reimburse costs incurred in anticipation of the receipt of those funds.

5. Notices and Communications.

a. All notices and other communications to either party under this Agreement shall be delivered personally, sent by email followed by a hard copy sent by U.S. mail, sent by overnight mail or courier service, or sent by certified U.S. mail, to the addresses set forth in subsections (b) and (c) of this section.

b. All notices or other communications to TxDOT shall be delivered to the following address or as otherwise directed by TxDOT:

Texas Department of Transportation
Innovative Finance and Debt Management Office
125 E. 11th Street
Austin, TX 78701
Attn: Benjamin Asher
Email: Benjamin.Asher@txdot.gov

with copies emailed to:

Texas Department of Transportation
Austin District
Physical Address
7901 N. I-35
Austin, TX 78753
Email:
heather.ashleynguyen@txdot.gov
RoseMarie.Klee@txdot.gov
Lloyd.Chance@txdot.gov

Mailing Address
P.O. Drawer 15426
Austin, TX 78761-5426

c. All notices or other communications to the Authority shall be delivered to the following address or as otherwise directed by the Authority:

Central Texas Regional Mobility Authority
3300 North IH 35, Suite 300
Austin, Texas 78705
Attention: Executive Director

d. All personally delivered notices or other communications shall be deemed received on the date so delivered. Any notice or other communication by email shall be deemed received on the date of confirmation of receipt of the email, provided such communication is also deposited in the U.S. mail. All notices or other communications delivered by overnight mail or courier service shall be deemed received on the date shown on the receipt of private carrier or courier service.

7. Miscellaneous Provisions.

a. Each party will comply with applicable state and federal law in the performance of their obligations under this Agreement and any other agreements executed by the parties in relation to the Project.

b. TxDOT or the Texas State Auditor may conduct an audit or investigation of any aspect of the Grant. The Authority must provide TxDOT or the Texas State Auditor with access to any information TxDOT or the Texas State Auditor consider relevant to the investigation or audit. An audit by either TxDOT or the Texas State Auditor can include, but is not limited to, any contract for the performance of work authorized by this Agreement. Additionally, the Authority will maintain its books and records relating to the Project and the financial assistance provided under this Agreement in accordance with the requirements of 43 Texas Administrative Code §27.55(b)(2), and will comply with the audit, retention, and other requirements relating to records regarding the Project in 43 Texas Administrative Code §27.55(b). Generally Accepted Accounting Principles (GAAP) will be followed. "GAAP" means those principles of accounting promulgated by the Financial Accounting Standards Board, the Governmental Accounting Standards Board or the standards of the Office of Management and Budget Circular A-133, Audits of States, Local Government and Non-profit Organizations, as applicable, or which have other substantial authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

c. In the event the Project is not developed and constructed by the Authority, then: (i) all work product and right of way associated with the Project and either procured with funds disbursed under this Agreement or otherwise granted under this Agreement shall, at TxDOT's request, be transferred to TxDOT, along with all right, title and interest in and to such work product, along with all right, title and interest in and to such work product or right of way; and (ii) TxDOT shall disburse to the Authority any undisbursed amounts of the financial assistance needed to pay or reimburse costs incurred by the Authority prior to such termination; provided, however, that such disbursement shall not exceed the aggregate amount of Project construction costs incurred prior to such termination. All unexpended funds provided to the Authority under this Agreement that exceed the aggregate amount of Project construction costs incurred prior to such termination shall be returned to TxDOT.

d. If either party defaults in the performance of any obligation described in this Agreement, the other party may exercise any rights and remedies granted by law or this Agreement.

e. The Authority shall comply with all environmental permits, issues and commitments necessary for development, construction, operation, or maintenance of the Project.

f. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

g. The signatories to this Agreement warrant that each has the authority to enter into

this Agreement on behalf of the party represented.

h. This Agreement does not constitute TxDOT approval of the Project or TxDOT approval for the Authority to construct the Project.

8. Effective Date. This Agreement shall be effective as of the date on which the last party to execute this Agreement does so.

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement in four multiple counterparts on the dates shown herein below.

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Mike Heiligenstein
Executive Director

By: _____
LtGen J.F. Weber, USMC (Ret)
Executive Director

Date: _____

Date: _____

ATTACHMENT A

Project Description:

Design build joint partnership between TxDOT and the Central Texas Regional Mobility Authority (CTRMA). The map highlights the project limits in dark blue. The project is approximately 8 miles in length and would include three new toll lanes and three improved non-tolled lanes in each direction with direct connectors at US 183 and SH 71, and improvements on SH 71 adjacent to US 183. The project also includes a proposed sidewalk (SW) and shared-use path (SUP) within the right of way adjacent to the roadway and an outside bike lane (BL).

Purpose:

The purpose of the project is to improve safety and mobility. Expanding the existing four lane facility will greatly enhance north-south mobility for the region and improve access to SH 71 and Austin Bergstrom International Airport and SH 71. The expansion and addition of direct-connectors at SH 71 will provide an alternate route to IH 35 from Ben White at IH 35 to US 183 and IH 35 through the US 290 interchange.

