



**CENTRAL TEXAS
Regional Mobility Authority**

September 28, 2016
AGENDA ITEM #12

Approve a Financial Assistance Agreement and
State Highway Fund loan agreement with the
Texas Department of Transportation for the SH 45
Southwest Project

Strategic Plan Relevance: Regional Mobility
Department: Engineering
Contact: Bill Chapman, Chief Financial Officer
Justin Word, P.E., Director of Project Management
Associated Costs: N/A
Funding Source: N/A
Action Requested: Consider and act on draft resolution

Summary:

By Resolution No. 15-009 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 SH 45 Southwest Project (the Project). The resolution also authorized the Executive Director to negotiate any agreements required to obtain financial assistance from TxDOT.

On December 17, 2015, the Texas Transportation Commission gave preliminary approval for financial assistance to the Mobility Authority for the Project in the form of a grant in the amount of \$ 28,920,000 and a loan in the amount of \$60,000,000 for construction of the Project.

CTRMA staff have negotiated terms for the grant and loan, and are requesting the Board's approval to finalize and execute these agreements on behalf of the Mobility Authority. The loan and grant will also be presented to the Texas Transportation Commission for final approval on September 29, 2016.

Backup provided: To be provided at the Board Meeting

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

RESOLUTION 16-___

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A STATE HIGHWAY FUND LOAN AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE IN CONNECTION THEREWITH; AND ENACTING OTHER PROVISIONS RELATED THERETO

WHEREAS, the Central Texas Regional Mobility Authority (the “Authority”) has been created and organized pursuant to and in accordance with the provisions of Chapter 361, Texas Transportation Code, and operates pursuant to the Constitution and laws of the State, including, particularly, Chapter 370, Texas Transportation Code, as amended (the “Act”), for the purposes of constructing, maintaining and operating transportation projects in Travis and Williamson Counties, Texas; and

WHEREAS, pursuant to the Act and other applicable laws, the Authority is authorized to: (i) study, evaluate, design, finance, acquire, construct, maintain, repair and operate transportation projects (as defined in the Act), individually or as a system (as defined in the Act); and (ii) issue bonds, certificates, notes or other obligations payable from the revenues of a transportation project or system, including tolls, fees, fares or other charges, to pay all or part of the cost of a transportation project and to refund any bonds previously issued for a transportation project; and (iii) impose tolls, fees, fares or other charges for the use of each of its transportation projects and the different parts or sections of each of its transportation projects; and (iv) enter into the SHF Loan Agreement (as defined herein) for the purposes provided herein; and

WHEREAS, pursuant to the authority granted in the Act and other applicable laws, the Authority has determined to enter into the SHF Loan Agreement for the purpose of financing a portion of the Project Costs (as defined in the SHF Loan Agreement) of the SH 45 SW Project (as more fully described in the SHF Loan Agreement, the “Project”); and

WHEREAS, pursuant to Resolution No. 15-009 (“Resolution No. 15-009”), approved by the Board of Directors (the “Board”) of the Authority on January 28, 2015, the CTRMA filed with the Texas Department of Transportation (“TxDOT”), an application for financial assistance in the form of a loan to finance a portion of the Project Costs related to the design, development and construction of the Project; and

WHEREAS, under the terms of the SHF Loan Agreement, repayment of the Loan will be secured by the issuance and delivery by the Authority of a promissory note (the “Note”) and by a pledge of and first lien on revenues of the Project; and

WHEREAS, an agreement entitled “SHF Loan Agreement” (the “SHF Loan Agreement”) has been submitted by TxDOT to the Board for approval; and

WHEREAS, the Board has determined to approve the borrowing of \$60,000,000 by the Authority from TxDOT for the purposes herein specified, and to approve the form, terms and provisions of the SHF Loan Agreement and the Note and to authorize the execution and delivery thereof; and

WHEREAS, to provide additional security under the SHF Loan Agreement, the Authority has determined to enter into a Trust Indenture (the "Trust Indenture") between the Authority and Regions Bank, as Trustee, relating to the Note, the SHF Loan Agreement and the Project; and

WHEREAS, it is hereby found and determined that the meeting at which this Resolution is approved was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Resolution, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY THAT:

Section 1. Findings. The findings and determinations contained in the preambles hereof are hereby incorporated herein for all purposes as if set forth herein in their entirety.

Section 2. Approval of Borrowing. The Board hereby authorizes the borrowing by the Authority of \$60,000,000 from TxDOT for the purpose of financing a portion of the Project Costs relating to the design, development and construction of the Project.

Section 3. Approval of SHF Loan Agreement. The form, terms and provisions of the SHF Loan Agreement, evidencing the obligation of the Authority to repay the loan made pursuant thereto (the "Loan"), in the substantially final form presented at this meeting, are hereby approved, with such changes as may be approved by the officer executing such SHF Loan Agreement, such approval to be evidenced by the execution thereof. The Chair, Executive Director and Chief Financial Officer of the Authority are each hereby appointed to Act as an Authorized Representative under the SHF Loan Agreement and are each hereby authorized to (i) approve the final terms of the SHF Loan Agreement and the Note, and (ii) execute and deliver the SHF Loan Agreement and the Note.

Section 4. Approval of Trust Indenture. The form, terms and provisions of the Trust Indenture, evidencing the obligation of the Authority to repay the loan made pursuant thereto, in the substantially final form presented at this meeting, are hereby approved, with such changes as may be approved by the officer executing such Trust Indenture, such approval to be evidenced by the execution thereof. The Chair, Executive Director and Chief Financial Officer of the Authority are each hereby authorized to (i) approve the final terms of the Trust Indenture and (ii) execute and deliver the Trust Indenture.

Section 5. Further Actions. The officers and staff of the Authority, and its professional consultants, are hereby authorized and directed to take any and all actions and to execute and deliver any and all instruments and documents, from time to time and on an ongoing

basis, as may be necessary or desirable to carry out and effectuate the purposes of this Resolution and the SHF Loan Agreement.

Section 6. Ratifying Other Actions. All other actions taken or to be taken by the Executive Director, Chief Financial Officer and other officers and staff of the Authority in connection with (i) the Loan and the execution and delivery of the SHF Loan Agreement, the Note and the Trust Indenture and (ii) the request submitted by the Authority to TxDOT for the Project to be designated as part of the state highway system are hereby approved, ratified and confirmed.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Adopted by the Board of Directors of Central Texas Regional Mobility Authority on the 28th day of September, 2016.

Submitted and reviewed by:

Approved:

Geoff Petrov
General Counsel

Ray A. Wilkerson
Chairman, Board of Directors

TRUST INDENTURE
BY AND BETWEEN
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
and
REGIONS BANK, AS TRUSTEE

Dated as of October 1, 2016

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TRUST INDENTURE

THIS TRUST INDENTURE, dated as of the 1st day of October, 2016 (this “Indenture”), is made by and between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (together with any successor to its rights, duties and obligations hereunder, the “Authority”), a body politic and corporate and a political subdivision of the State of Texas (the “State”) duly created, organized and existing under the laws of the State, and Regions Bank (together with any successor trustee hereunder, the “Trustee”), an Alabama state banking corporation.

RECITALS

WHEREAS, the Authority and TxDOT have each authorized the execution and delivery of a State Highway Fund Loan Agreement (the “Loan Agreement”), dated as of _____, 2016, pursuant to which TxDOT will make a loan to the Authority in the aggregate principal amount not to exceed \$60,000,000 for the purpose of financing a portion of the costs related to the design, development and construction of the Project (as defined in the Loan Agreement); and

WHEREAS, the obligations of the Authority under the Loan Agreement will be secured by a promissory note (the “Note”), secured by and payable from the Trust Estate (as defined herein); and

WHEREAS, proceeds of the Note and certain other revenues and funds of the Authority will be deposited with the Trustee to be disbursed, allocated and applied pursuant to the terms of this Indenture and the Loan Agreement;

NOW, THEREFORE, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority, TxDOT and the Trustee do hereby mutually covenant and agree as follows:

ARTICLE I.

DEFINITIONS, STATUTORY AUTHORITY AND INTERPRETATION

Section 101. Definitions. The following terms shall, for all purposes of this Indenture, have the following meanings:

“Act” shall mean Chapter 370, Texas Transportation Code, as amended from time to time, together with the Constitution and other laws of the State of Texas applicable to the Authority.

“Amortized Value” shall mean, with respect to a Permitted Investment, the value of such Permitted Investment calculated by dividing the total premium or discount at which such Permitted Investment was acquired (exclusive of accrued interest other than accrued interest paid in connection with the acquisition of such Permitted Investment and not yet recovered) by the number of days remaining to the maturity of such Permitted Investment at the time of its acquisition and multiplying the amount so calculated by the number of days since such

acquisition and deducting or adding, as the case may be, the product thus obtained to the par value of such Permitted Investment.

“Authority” shall mean the Central Texas Regional Mobility Authority, a body politic and corporate and a political subdivision of the State of Texas, and its successors and assigns.

“Authorized Representative” shall mean, with respect to the Authority, the Executive Director, Chief Financial Officer and Controller of the Authority or any other employee, officer or member of the Board of Directors of the Authority authorized to perform specific acts or duties under this Indenture by resolution duly adopted by the Board of Directors of the Authority, a copy of which shall be filed with TxDOT and the Trustee.

“Debt Service Fund” shall mean the fund so designated and created in Section 301(d) of this Indenture.

“Debt Service Reserve Fund” shall mean the fund so designated and created in Section 301(e) of this Indenture.

“Depository” shall mean any bank or trust company appointed by the Authority as a depository of moneys and securities held under the Indenture.

“DSR Requirement” shall mean, for each Fiscal Year, an amount equal to the greater of (i) \$2,000,000 or (ii) the amount of the scheduled Annual Debt Service due in the next succeeding Fiscal Year.

“Fair Market Value” shall mean, as of any particular date of valuation: (i) as to Permitted Investments the bid and asked prices of which are published on a regular basis in a financial journal or publication of general circulation in the United States of America, the bid price for such Permitted Investments so published on or most recently prior to the date of valuation by the Trustee or any Depository; or (ii) as to Permitted Investments the bid and asked prices of which are not published on a regular basis in a financial journal or publication of general circulation in the United States of America, the average bid price on such Permitted Investments at the date of valuation by the Trustee or any Depository, as reported by any two nationally recognized dealers in such Permitted Investments.

“Indenture” shall mean this Trust Indenture, dated as of October 1, 2016, by and among the Authority and the Trustee.

“Loan Agreement” shall mean the State Highway Fund Loan Agreement dated _____, 2016, between the Authority and TxDOT.

“Note” shall mean the promissory note securing the payment obligations of the Authority under the Loan Agreement.

“Operation and Maintenance Fund” shall mean the fund so designated and created in Section 301(c) of this Indenture.

“Permitted Investments” shall mean any security or obligation or combination thereof permitted under the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended, and the Authority’s duly approved Investment Policy.

“Project Construction Fund” shall mean the fund so designated and created in Section 301(a) of this Indenture.

“Project Funds” means the Funds created in Section 301 hereof and any account or sub-account established in such Funds.

“Renewal and Replacement Fund” shall mean the fund so designated and created in Section 301(f) of this Indenture.

“Revenue Fund” shall mean the fund so designated and created in Section 301(b) of this Indenture.

“RRF Requirement” shall mean, for each Fiscal Year, an amount equal to the one year average of the capital improvement and Major Maintenance budget for the Project for the next five Fiscal Years, as estimated by the Authority’s General Engineering Consulting in its annual report to the Authority, as required by the Loan Agreement.

“State” shall mean the State of Texas.

“Surplus Fund” shall mean the fund so designated and created in Section 301(g) of this Indenture.

“Trustee” shall mean Regions Bank, an Alabama state banking corporation, and its successors in trust in its capacity as Trustee under this Indenture.

“Trust Estate” shall have the meaning given to such term in Section 201 of this Indenture.

“TxDOT” shall mean the Texas Department of Transportation, an agency of the State.

Section 102. Additional Definitions. Capitalized terms used in this Indenture and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Section 103. Recitals, Table of Contents, Titles and Headings. The terms and phrases used in this Indenture have been included for convenience of reference only and the meaning, construction and interpretation of such words and phrases for purposes of this Indenture shall be determined solely by reference to Section 101. The table of contents, titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Indenture or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 104. Interpretation. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, words of the singular number shall be construed to include correlative

words of the plural number and vice versa. References in this Indenture to numbered Articles, Sections or portions thereof shall refer to the respective Articles and Sections of this Indenture, unless expressly specified otherwise. The terms “hereof,” “herein,” “hereunder” and similar terms shall refer to this Indenture as a whole and not to any particular provision of this Indenture. This Indenture and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Indenture.

[END OF ARTICLE I]

ARTICLE II.

ESTABLISHMENT OF THE TRUST ESTATE

Section 201. Granting Clauses. In order to secure the payment of the Note as the same become due and payable, whether at maturity or by prior prepayment, and the performance and observance of all of the covenants and conditions contained herein and in the Loan Agreement, and in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the acceptance of the Note by TxDOT, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority does hereby GRANT, BARGAIN, CONVEY, ASSIGN and PLEDGE to the Trustee and its successors in trust hereunder all right, title and interest of the Authority, whether now owned or hereafter acquired, in and to (i) all Project Revenues (subject to the requirements for transfers of Revenues to the Operation and Maintenance Fund set forth in Section 303); (ii) all moneys, including investment earnings, deposited into accounts or funds created in Section 301 or in a Supplemental Indenture to be held by or on behalf of the Trustee subject to the provisions of this Indenture relating to each of such funds and accounts (but excluding moneys on deposit in the Operation and Maintenance Fund and amounts held in the Project Construction Fund containing moneys that are restricted to another use, such as right-of-way contributions that may be used for only that purpose); and (iii) any insurance proceeds and other moneys required to be deposited in such accounts and funds by this Indenture or the provisions of a Supplemental Indenture (collectively, the "Trust Estate"), for the benefit and security of the Note and the Loan Agreement.

TO HAVE AND TO HOLD all the same, with rights and privileges appurtenant thereto, unto the Trustee and its successors in trust forever, subject, however, to all of the terms and provisions of this Indenture;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the benefit and security of the Note and the Loan Agreement;

PROVIDED, HOWEVER, that if the Authority, its successors or assigns, shall well and truly pay, or cause to be paid, the principal amount of the Note and the interest due or to become due thereon, at the times and in the manner provided in the Note and the Loan Agreement according to the true intent and meaning thereof, and shall cause the payments to be made into the funds and accounts established herein in the amounts required hereby, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then, upon such payment and performance, this Indenture and the rights and liens hereby granted shall cease, determine and be void; otherwise, this Indenture is to be and shall remain in full force and effect.

Section 202. Time of Pledge; Delivery of Trust Estate. The grant, conveyance, assignment, mortgage and pledge of the Trust Estate, including the Pledged Revenues, pursuant to the provisions of this Indenture shall be effective from and after the delivery of the Note by the Authority of TxDOT. Nothing in the Indenture shall create an obligation on the part of the

Authority to physically deliver the Trust Estate to the Trustee except as expressly provided in this Indenture.

Section 203. Limited Obligations of Authority. The Note and the Loan Agreement shall be a limited obligation of the Authority payable solely from the Trust Estate, including the Pledged Revenues. The Note and the Loan Agreement shall constitute a valid claim against such Trust Estate, which is pledged to secure the payment of the principal amount of and interest on the Note, whether at maturity or upon prior prepayment, and which shall be utilized for no other purpose, except as expressly authorized in this Indenture. The Note and the Loan Agreement shall never constitute general obligations of the Authority and under no circumstances shall the Note and the Loan Agreement ever be payable from, nor shall the Holder thereof have any rightful claim to, any income, revenues, funds or assets of the Authority other than those pledged hereunder as security for the payment thereof.

Section 204. Declaration. It is hereby expressly declared that the Trust Estate hereby pledged is to be applied, disbursed, dealt with and disposed of under, upon and subject to the terms, conditions, covenants, agreements, uses and purposes set forth in this Indenture.

[END OF ARTICLE II]

ARTICLE III.

FUNDS AND ACCOUNTS

Section 301. Establishment of Funds and Accounts. The following Funds are hereby established and created:

- (a) Project Construction Fund;
- (b) Revenue Fund;
- (c) Operation and Maintenance Fund;
- (d) Debt Service Fund;
- (e) Debt Service Reserve Fund;
- (f) Renewal and Replacement Fund; and
- (g) Surplus Fund.

The Authority reserves the right to establish one or more additional Funds for such purposes as the Authority may determine from time to time.

The Authority further reserves the right to establish one or more accounts and subaccounts within each Fund including, without limitation, accounts and subaccounts for the purpose of accounting for Note proceeds, Pledged Revenues and other amounts relating to the Note and the Loan Agreement and for such other purposes as the Authority may determine from time to time. Each such account or subaccount within a Fund shall be designated in a manner that indicates the identity of such Fund and that distinguishes such account or subaccount from all other accounts and subaccounts established under the Indenture.

All of such Funds and Accounts shall be established with, held and maintained by the Trustee. Amounts held at any time by the Trustee in any of the Funds and Accounts established and created pursuant to this Section (other than the Operation and Maintenance Fund, which shall be held outside this Indenture) shall be held in trust for the benefit of TxDOT separate and apart from all other funds of the Trustee and the Authority and shall be disbursed, allocated and applied solely for the purposes and in the manner provided herein and in the Loan Agreement.

Section 302. Flow of Funds. All Project Revenues shall be deposited as received by the Authority into the Revenue Fund. In addition, proceeds of insurance and/or condemnation proceeds may be deposited to the Revenue Fund as required or permitted by the Loan Agreement. Amounts on deposit in the Revenue Fund shall be deposited in, or credited to, as appropriate, the following Funds and Accounts, in conformance with the Annual Project Budget and at the times required herein and in the Loan Agreement, in the following order of priority:

First, to the Operation and Maintenance Fund for payment of Operating Expenses and Maintenance Expenses in accordance with Section 303 of this Indenture.

Second, to the Debt Service Fund in accordance with Section 304 of this Indenture.

Third, to the Debt Service Reserve Fund in accordance with Section 305 of this Indenture.

Fourth, to the Renewal and Replacement Fund in accordance with Section 306 of this Indenture.

Seventh, to the Surplus Fund in accordance with Section 307 of this Indenture.

Section 303. Operation and Maintenance Fund. The Operation and Maintenance Fund shall be held by the Trustee in the name of the Authority outside of this Indenture. All funds in the Operation and Maintenance Fund shall be held separate and apart from the Authority's other funds and accounts until applied as provided herein and in the Loan Agreement. On the 15th day of each month [commencing _____], the Trustee shall transfer an amount sufficient to make the balance on deposit in the Operation and Maintenance Fund equal to one-sixth of the Operating Expenses and Maintenance Expenses budgeted for such Fiscal Year, as set forth in the Annual Project Budget; provided, the monthly transfer amount shall be increased or decreased as necessary to reflect amendments to the budgeted Operating Expenses and Maintenance Expenses or to take into consideration amounts then on deposit in the Operation and Maintenance Fund.

Section 304. Senior Lien Debt Service Fund. (a) The Trustee shall transfer amounts on deposit from time to time in the Revenue Fund to the Debt Service Fund in the amounts and at the times described in Section 3.2 of the Loan Agreement to accumulate funds required for the timely payment of interest accruing and any principal due on the Note. The Debt Service Fund may also receive any other funds of the Authority, including proceeds of any bonds or other obligations issued by the Authority or loans or other financial assistance provided to the Authority, a purpose of which is to pay or prepay the Note and such funds may be applied for such purpose.

(b) On or before the Initial Interest Payment Date and on or before each succeeding Interest Payment Date thereafter through the maturity date for the Note, the Trustee shall transfer from the Debt Services Fund to TxDOT the applicable semiannual payments of interest on the Note as set forth in Exhibit B to the Loan Agreement. On or before each Principal Payment Date and each Deferred Debt Service Payment Date set forth in Exhibit B to the Loan Agreement, the Trustee shall transfer from the Debt Services Fund to TxDOT the applicable payment of principal or the Deferred Debt Service Installment as set forth in Exhibit B to the Loan Agreement.

(c) If at the time the Trustee is required to make a withdrawal from the Debt Service Fund the moneys therein shall not be sufficient for such purpose, the Trustee shall withdraw the amount of such deficiency from the moneys on deposit in the following funds or accounts and transfer the same to the Debt Service Fund in the following order: the Revenue Fund; the Surplus Fund; the Renewal and Replacement Fund and the Debt Service Reserve Fund.

Section 305. Senior Lien Debt Service Reserve Fund. (a) Subject to the requirements for and following the prior transfers of Funds from the Revenue Fund to the Operation and Maintenance Fund and the Debt Service Fund, as provided in Section 303 and Section 304 hereof, on the fifteenth day of each month [commencing on _____], the Trustee shall transfer all Project Revenues on deposit in the Revenue Fund to the Debt Services Reserve Fund until the amounts on deposit therein equal the DSR Requirement. Notwithstanding the foregoing, the Authority shall cause the amount in the Debt Service Reserve Fund to be equal to the initial DSR Requirement on or before the Initial Interest Payment Date.

(b) Moneys and investments held in the Debt Service Reserve Fund shall be held and used for the benefit of TxDOT, as the holder of the Note. If on any Interest Payment Date, Principal Payment Date or Deferred Debt Service Payment Date, after giving effect to all transfers pursuant to Section 305 and after making all required transfers from other Funds, the amount in the Debt Service Fund shall be less than the amount required to pay the interest on the Note due and payable on such date, the amount required to pay the principal amount of the Note due on such date, then the Trustee shall apply amounts from the Debt Service Reserve Fund to the extent necessary to eliminate such deficiency. If at any time, the moneys and investments in the Debt Service Reserve Fund are less than the DSR Requirement, the Trustee shall make the monthly deposits of Project Revenues described above in such amount as will restore the balance of the Debt Service Reserve Fund to the DSR Requirement. If at any time the moneys and investments held in the Debt Service Reserve Fund shall exceed the DSR Requirement, the Authority shall direct whether such excess moneys shall be transferred by the Trustee to the credit of the Debt Service Fund, the Revenue Fund or the Surplus Fund.

Section 306. Renewal and Replacement Fund. (a) Subject to the requirements for and following the prior transfers of funds from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund and the Debt Service Reserve Fund, as provided in Section 303, Section 304 and Section 305, on the fifteenth day of each month [commencing on _____], the Trustee shall transfer all Project Revenues on deposit in the Revenue Fund to the Renewal and Replacement Fund until the amounts on deposit therein equal the RRF Requirement. If at any time, amounts on deposit in the Renewal and Replacement Fund are less than the RRF Requirement, the Trustee shall make monthly deposits in such amounts as will restore the balance of the Renewal and Replacement Fund to the RRF Requirement. Only after the Renewal and Replacement Fund is funded to the RRF Requirement, and so long as such amount remains on deposit therein, shall any amounts on deposit in the Revenue Fund be transferred to the Surplus Fund.

(b) The Trustee shall transfer moneys in the Renewal and Replacement Fund to the Debt Service Fund at such times as may be required by Section 304.

Section 307. Surplus Fund. Subject to the requirements for and following the prior transfers of funds from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Debt Service Reserve Fund and the Renewal and Replacement Fund, as provided in Section 303, Section 304, Section 305 and Section 306, on the fifteenth day of each month [commencing on _____], the Trustee shall transfer all remaining amounts in the Revenue Fund to the Surplus Fund. Amounts on deposit in the Surplus Fund may be used to pay

Operation Expenses and Maintenance Expenses or transferred to the Debt Service Fund, the Debt Service Reserve Fund or the Renewal and Replacement Fund when amounts on deposit in the Revenue Fund are insufficient to make the transfers required thereto by Section 303, Section 304, Section 305 and Section 306. Notwithstanding the foregoing, at the end of each Fiscal Year amounts on deposit in the Surplus Fund shall be used for the purposes and in the manner required by Sections 3.3(b) and (c) of the Loan Agreement.

Section 308. Project Construction Fund. Proceeds of the Note shall be deposited by TxDOT with the Trustee for deposit to the Project Construction Fund in accordance with Section 2.2 of the Loan Agreement. In addition, proceeds of insurance and/or condemnation proceeds may be deposited to the Project Construction Account (and the Subaccounts thereof) in accordance with Section [7.15] of the Loan Agreement. Funds on deposit in the Project Construction Account shall be disbursed, applied and allocated in accordance with Sections 2.2 and 2.3 of the Loan Agreement. The Authority shall submit written requisition requests in the form of Exhibit A to this Indenture to request disbursements from the Project Construction Fund.

[END OF ARTICLE III]

ARTICLE IV.

CONCERNING THE TRUSTEE

Section 401. Trustee; Appointment and Acceptance of Duties. Regions Bank is hereby appointed as Trustee. The Trustee hereby accepts the duties and obligations imposed upon it by this Indenture with respect to the Note and the Trust Estate.

Section 402. Responsibilities of the Trustee. (a) The recitals of fact herein in the Loan Agreement and in the Note shall be taken as the statements of the Authority and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Note or as to the Trust Estate, and the Trustee shall not incur any liability in respect thereof. The Trustee shall not be under any responsibility or duty with respect to the application of any moneys paid to the Authority. The Trustee shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own moneys, unless properly indemnified. Subject to the provisions of subsection (b) of this Section 402, the Trustee shall not be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Any provision of this Indenture relating to action taken or to be taken by the Trustee or the evidence upon which the Trustee may rely shall be subject to the provisions of this Section 402.

Section 403. Evidence on Which the Trustee May Act. (a) The Trustee, upon receipt of any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document furnished to it pursuant to any provision of this Indenture, shall examine such instrument to determine whether it conforms to the requirements of this Indenture and shall be protected in acting upon any such instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may or may not be counsel to the Authority, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under this Indenture in good faith and in accordance therewith.

(b) Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed conclusively to be proved and established by a certificate of an Authorized Representative, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this Indenture upon the faith thereof; but in its

discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable.

(c) Except as otherwise expressly provided in this Indenture, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision hereof to the Trustee shall be sufficiently executed if executed by an Authorized Representative.

Section 404. Compensation. The Authority shall pay to the Trustee from time to time reasonable compensation for all services rendered under this Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture. Subject to the provisions of Section 402, the Authority further agrees, to the extent permitted by law, to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and which are not due to its negligence, misconduct or default.

Section 405. Resignation of Trustee. The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 60 days' written notice to the Authority and TxDOT of the date it desires to resign and such registration shall take effect immediately on the appointment and acceptance of a successor Trustee pursuant to Section 408 hereof.

Section 406. Removal of Trustee. The Trustee may be removed, with or without cause, at any time (unless an Event of Default has occurred and is continuing) by a written instrument filed with the Trustee and signed by an Authorized Representative of the Authority, stating that the Board of Directors of the Authority has adopted a resolution providing for the removal of the Trustee and the appointment of a successor Trustee. No such removal of the Trustee shall become effective until a successor has been appointed and accepted the duties of Trustee.

Section 407. Appointment of Successor Trustee. (a) If in a proper case no appointment of a successor Trustee shall be made within 45 days after the Trustee shall have given to the Authority written notice as provided in Section 305 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, its removal, or for any other reason whatsoever, the Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(b) Any Trustee appointed under the provisions of this Section 307 in succession to the Trustee shall be a bank, trust company or national banking association organized and doing business under the laws of the United States of America or any state, and having capital stock and surplus aggregating at least \$50,000,000, which is willing and able to accept the office on reasonable and customary terms and which is authorized by law to perform all the duties imposed upon it by this Indenture.

Section 408. Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed under this Indenture shall execute, acknowledge and deliver to its predecessor

Trustee, and also to the Authority and TxDOT, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the written request of the Authority, TxDOT or of the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Authority be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Authority and/or TxDOT.

Section 409. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association, and shall be authorized by law to perform all the duties imposed upon it by this Indenture, shall be the successor to the Trustee without the execution or filing of any paper or the performance of any further act.

Section 410. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority and TxDOT, both of whom may make copies thereof.

[END OF ARTICLE IV]

ARTICLE V.

INVESTMENT OF MONEYS AND SECURITY FOR DEPOSITS

Section 501. Investment of Moneys. (a) Moneys held in any of the Project Funds held under this Indenture and any Supplemental Indenture may be retained uninvested, if deemed necessary by the Authority, as trust funds and secured as provided in Section 505 or may be invested and reinvested by the Trustee or by any Depository holding all or a portion of the moneys in such Funds, in accordance with instructions from the Authority (which, if given orally, shall be confirmed promptly in writing), to the fullest extent practicable and if permitted by the Act, in Permitted Investments the proceeds of which the Authority estimates will be received not later than such times as shall be necessary to provide moneys when needed for payments to be made from each such Fund. Notwithstanding anything herein to the contrary, Permitted Investments in all Funds shall mature not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Funds. The investment instructions of the Authority may take the form of standing investment directions.

(b) Interest earned from investing any moneys in any Fund or profits realized from any Permitted Investments in any Fund shall be retained in such Fund.

Section 502. Valuation and Sale of Investments. (a) Permitted Investments acquired as an investment of moneys in any Fund shall be at all times a part of such Fund and any profit realized from the liquidation of such investment shall be applied as provided in subsection (b) of Section 501 and any loss resulting from the liquidation of such Permitted Investment shall be charged to the respective Fund.

(a) In computing the amount in any Fund, obligations purchased as an investment of moneys therein shall be valued at their Amortized Value. The valuation of each Fund held under this Indenture shall be valued by the Trustee within thirty (30) days after the end of the Fiscal Year.

(b) Except as otherwise provided in the Indenture, the Trustee or any Depository shall sell at the best price obtainable (as evidenced by two or more bids), or present for redemption, any Permitted Investment so purchased as an investment whenever it shall be requested to do so in a writing or whenever it shall be necessary in order to provide moneys to meet any payment or transfer from any Fund held by it. Neither the Trustee nor any Depository shall be liable or responsible for making any such investment in the manner provided in this Article V or for any loss resulting from any such investment.

Section 503. Payment for Authorized Investments and Trust Receipts. When Permitted Investments are purchased from or through a member in good standing of the National Association of Securities Dealers, or from or through a national or state bank, the Authority, the Trustee and any Depository are authorized to pay for them using moneys in the appropriate Fund and, in each case, shall obtain, as soon as may be practicable, a confirming invoice from the seller of the Permitted Investments showing that the Permitted Investments have been purchased by or for the account of the Authority. Actual delivery of the Permitted Investments to the Authority, the Trustee or the Depository may be accomplished thereafter in accordance with

normal and recognized practices within the securities and banking industries, including the book entry procedure of the Federal Reserve Bank. Any Permitted Investments so acquired, at the direction of the Authority, the Trustee, or the Depository, as applicable, may be deposited with a bank or trust company having undivided capital and surplus of at least \$50,000,000 or a federal reserve bank or branch thereof designated by the Authority within or without the State of Texas, in trust, and such deposits shall be evidenced by receipts of the banks in which the Permitted Investments are thus deposited.

Section 504. Transfer of Investments. Any transfer required to be made from one Fund to another Fund held by the same person may be made by book transfer of any moneys or investments or portions of investments without liquidating any investments in order to make such transfer unless the moneys required to be transferred are needed to make payments out of the Fund to which such moneys were transferred at the time of transfer.

Section 505. Security for Deposits. All moneys held under the Indenture by the Trustee or any Depository, to the extent not insured by the Federal Deposit Insurance Corporation or represented by Permitted Investments acquired with such moneys, shall be continuously and fully secured for the benefit of the Authority and the Holders of the Obligations, either (i) by lodging with a Federal Reserve Bank or the Trustee, as custodian, as collateral security, Government Obligations having a Fair Market Value not less than the amount of such moneys, or (ii) in such other manner as may then be required by applicable laws and regulations regarding security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Trustee to give security under this Section 505 for the deposit with it of any moneys held in trust and set aside by it for the payment of the principal amount or interest on the Note.

[END OF ARTICLE V]

ARTICLE VI.

SUPPLEMENTAL INDENTURES

Section 601. General Provisions Concerning Supplemental Indentures. (a) The Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to provisions of this Article VI.

The Trustee is hereby authorized to accept the delivery of any Supplemental Indenture referred to and permitted or authorized by Section 602 or Section 603 and to make all further agreements and stipulations which may be therein contained, and the Trustee, in taking such action, shall be fully protected in relying on an opinion of counsel that such Supplemental Indenture is authorized or permitted by the provisions of the Indenture.

No Supplemental Indenture shall change or modify any of the rights or obligations of any Trustee without its written consent thereto.

Each Supplemental Indenture executed and delivered in accordance with this ARTICLE VI shall thereafter form a part of the Indenture, and all of the terms and conditions in any such Supplemental Indenture thereafter shall be a part of the terms and conditions of the Indenture.

Section 602. Supplemental Indentures Not Requiring TxDOT Consent. The Authority and the Trustee, at any time and from time to time, without the consent of TxDOT, may execute and deliver a Supplemental Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Indenture;
- (b) To insert such provisions clarifying matters or questions arising under the Indenture as are necessary or desirable and are not contrary to or inconsistent with the Indenture as theretofore in effect;
- (c) To grant to or to confer upon the Trustee for the benefit of TxDOT additional rights, remedies, powers, authority or security that may be lawfully granted to or conferred upon the Trustee;
- (d) To add to the covenants and agreements of the Authority in this Indenture or any Supplemental Indenture, other covenants and agreements to be observed by the Authority which are not contrary to or inconsistent with this Indenture or the applicable Supplemental Indentures as theretofore in effect;
- (e) To add to the limitations and restrictions in this Indenture or any Supplemental Indenture other limitations and restrictions to be observed by the Authority which are not contrary to or inconsistent with this Indenture or the applicable Supplemental Indenture as theretofore in effect;
- (f) To surrender any right, power or privilege reserved to or conferred upon the Authority by the terms of the Indenture, provided that the surrender of such right,

power or privilege is not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Indenture;

(g) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture or any Supplemental Indenture, of the Trust Estate or of any other moneys, securities or funds;

(h) To modify any of the provisions of this Indenture or any Supplemental Indenture in any respect whatever, provided that such modification shall be, and be expressed to be, effective only after the Note and the Loan Agreement shall cease to be outstanding.

Section 603. Supplemental Indentures Requiring Holder Consent. The Authority and the Trustee, at any time and from time to time, may execute and deliver a Supplemental Indenture for the purpose of making any modification or amendment to the Indenture, but only with the written consent of TxDOT; provided, however, that if such modification or amendment will, by its terms, not take effect so long as the Note remains outstanding, the consent of TxDOT of the Note shall not be required and the Note shall not be deemed to be outstanding for the purpose of this Section 603. Nothing in this, however, shall be construed as requiring the consent of TxDOT in connection with the execution and delivery of any Supplemental Indenture for any purpose described in Section 602.

[END OF ARTICLE VI]

ARTICLE VII.

DISCHARGE

Section 701. Discharge. If:

(a) the principal amount of the Note and the interest due or to become due thereon, shall be paid, or is caused to be paid, at the times and in the manner to which reference is made in the Note and the Loan Agreement and, as the case may be, according to the true intent and meaning thereof, and

(b) all of the covenants, agreements, obligations, terms and conditions of the Authority under this Indenture and the Loan Agreement shall have been kept, performed and observed and there shall have been paid to the Trustee all sums of money due or to become due to them in accordance with the terms and provisions hereof,

then the right, title and interest of the Trustee in the Trust Estate shall thereupon cease and the Trustee, on request of the Authority and at the expense of the Authority, shall release this Indenture and the Trust Estate and shall execute such documents to evidence such release as may be reasonably required by the Authority and shall turn over to the Authority, or to such other person as may be entitled to receive the same, all balances remaining in any Funds hereunder.

[END OF ARTICLE VII]

ARTICLE VIII.

MISCELLANEOUS

Section 801. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Authority, TxDOT and the Trustee, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof

Section 802. Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Indenture to be given to or filed with the Authority, TxDOT or the Trustee shall be deemed to have been sufficiently given or filed for all purposes of this Indenture if and when sent by registered or certified mail, postage prepaid, to the address specified below or, to such other address as may be designated in writing by the parties:

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

with a copy to: Locke Lord LLP
100 Congress Avenue, Suite 300
Austin TX 78701
Attn: C. Brian Cassidy

TxDOT: Texas Department of Transportation
Attn: Chief Financial Officer
125 East 11th Street
Austin TX 78701-2483

with a copy to: Texas Department of Transportation
Attn: Office of General Counsel
125 East 11th Street
Austin TX 78701-2483

Trustee: Regions Bank
1717 St. James Place, Suite 500
Houston, Texas 77056
Attn: _____

Section 803. Governing Law. This Indenture shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with, the laws of the State of Texas.

Section 804. Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or

unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in order to effect the provisions of this Indenture.

Section 805. Execution in Several Counterparts. This Indenture may be simultaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

[END OF ARTICLE VIII]

IN WITNESS WHEREOF, the Authority, TxDOT and the Trustee have caused this Indenture to be signed, sealed and attested on their behalf by their duly authorized representatives, all as of the date first hereinabove written.

CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY

By: _____

ATTEST:

Secretary

REGIONS BANK, as Trustee

By: _____
Authorized Officer

EXHIBIT A
FORM OF REQUISITION
PROJECT CONSTRUCTION FUND
CERTIFICATE AND REQUISITION FOR PAYMENT

DATE: [Month], [Year]

DRAW REQUEST NO.: _____

<u>DESCRIPTION SUMMARY</u> ¹	<u>AMOUNT</u>
	\$ _____
TOTAL AMOUNT REQUESTED	\$ _____

The Authority does hereby certify to the Trustee that: (i) each item submitted herewith is a proper charge against the Project Construction Fund for Project Costs and has not been paid, (ii) payment of such Project Costs will not exceed any limitation on such costs as provided in the Loan Agreement, (iii) such requisition contains no item representing payment on account of any retainage which the Authority is as of the date of this requisition not entitled to release, (iv) no default exists under the Indenture (as hereinafter defined), which has not been disclosed to the Trustee and the Authority will use its best efforts to cure any default if it exists and (v) there has not been filed with or served upon the Authority legal notice of any lien, right to lien, attachment or other claim, which is valid in the opinion of counsel to the Authority and affects the right to receive payment of any of the moneys payable to any of the Persons, firms or corporations named herein which has not been released or will not be released simultaneously with such payment.

Capitalized terms appearing herein that are defined terms in that certain Indenture (the "Indenture"), dated as of October 1, 2016, between Central Texas Regional Mobility Authority (together with any successor to its rights, duties, and obligations thereunder, the "Authority") and Regions Bank, as trustee (together with any successor trustee thereunder, the "Trustee"), have the meanings assigned to them in the Indenture. Reference is made to the Indenture for such definitions and for all other purposes.

Please remit funds by wire transfer to the Authority [Wiring instructions for disbursement].

CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY

By: _____
Authorized Representative

¹ Attach appropriate information indicating the name of the Person, Firm or Corporation to whom payment is due, the amount to be paid and the purpose for which such obligation was incurred.

CERTIFICATION OF GENERAL ENGINEERING CONSULTANT

As General Engineering Consultant for the Project, we hereby certify the following in connection with Certificate and Requisition for Payment Draw Request No. _____:

- (i) such requisition is approved;
- (ii) the amount requisitioned is due and has not previously been paid from the State of the Project Construction Fund;
- (iii) insofar as the payment is to be made for work, material, supplies or equipment, the work has been performed and the materials, supplies or equipment have been installed in the applicable Project or have been delivered at the site;
- (iv) all work material, supplies and equipment for which payment is to be made are, in our opinion, substantially in accordance with the plans and specifications or duly approved change orders; and

[If an item for payment includes real property:

- (v) acquisition of such property is necessary or advisable in connection with the construction or operation of the applicable project.]

as General Engineering Consultant

By: _____
Title: _____