



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

April 28, 2021
AGENDA ITEM #14

Discuss and consider approving an Interlocal Agreement with the City of Austin for Drainage Improvements to Boggy Creek

Strategic Plan Relevance:	Regional Mobility
Department:	Engineering
Contact:	Mike Sexton, P.E., Acting Director of Engineering
Associated Costs:	\$600,000.00
Funding Source:	183 South Project funds
Action Requested:	Consider and act on draft resolution

Project Description/Background - The Central Texas Regional Mobility Authority (the Authority) constructed new bridges at Boggy Creek as part of the 183 South Project. The bridge columns require erosion protection in Boggy Creek. The Authority included scope in the 183 South design-build contract for this erosion protection.

The City of Austin was separately proposing erosion control improvements in the Boggy Creek area to protect their infrastructure (shared use path, etc.). In partnership with the City of Austin, the Authority desires to shift the design and construction of a larger scale project (that will include both entities' separate projects) to inhibit erosion in the reach of Boggy Creek to the City of Austin. This larger scale project will protect both the City of Austin's shared use path and the 183S bridges at Boggy Creek.

The City has completed the design of this project at Boggy Creek and subsequently the City will be responsible for both the construction and ongoing maintenance of those designed stabilization improvements. The Authority will inspect the project for final acceptance.

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

RESOLUTION NO. 21-0XX

**APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF AUSTIN FOR
DRAINAGE IMPROVEMENTS TO BOGGY CREEK**

WHEREAS, the Central Texas Regional Mobility Authority (“Mobility Authority”) was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.01, *et. seq.* (the “RMA Rules”); and

WHEREAS, both the Mobility Authority and City of Austin are authorized to design and construct roads needed to relieve existing and future traffic congestion and to improve the transportation network that serves City of Austin residents and the traveling public; and

WHEREAS, under the Interlocal Cooperation Act, Chapter 791, Government Code, and Chapters 222 and 370, Transportation Code, the Mobility Authority and the City of Austin may enter into one or more agreements to cooperate in funding, designing, building, and maintaining improvements to the roadway system that serves the residents, landowners, businesses, and the traveling public in the City of Austin; and

WHEREAS, as part of the Bergstrom Expressway (183 South) Project the Mobility Authority constructed new bridges at Boggy Creek that require erosion protection for the bridge columns in Boggy Creek as outlined in the scope of the 183 South design-build contract; and

WHEREAS, the City of Austin was separately designing drainage improvements in the Boggy Creek area to protect City of Austin shared use path infrastructure, including erosion protection for the bridge columns constructed by the Mobility Authority as part of the 183 South Project; and

WHEREAS, the Mobility Authority desires the City of Austin to construct the erosion protection for the bridge columns in Boggy Creek to the City of Austin as part of its drainage improvements in the Boggy Creek area; and

WHEREAS, the Interim Executive Director and the City of Austin have negotiated an Interlocal Agreement for the City of Austin to provide design and construction of bridge erosion protection for the constructed bridges at Boggy Creek in an amount not to exceed \$600,000.00 in which the City of Austin is responsible for both construction and maintenance and the Mobility Authority will be responsible for inspection upon final acceptance; and

WHEREAS, the Interim Executive Director recommends that the Board of Directors approve the interlocal agreement with the City of Austin for the design, construction, and maintenance of the

erosion protection for the bridge columns at Boggy Creek in an amount not exceed \$600,000.00 in the form or substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board hereby authorizes the Interim Executive Director to execute an interlocal agreement with the City of Austin for the design, construction, and maintenance of the erosion protection for the bridge columns at Boggy Creek in an amount not exceed \$600,000.00 in the form or substantially the same form attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 28th day of April 2021.

Submitted and reviewed by:

Approved:

C. Brian Cassidy, Counsel for the
Central Texas Regional Mobility Authority

Robert W. Jenkins, Jr.
Chairman, Board of Directors

Exhibit A

**INTERLOCAL AGREEMENT FOR
THE CHANNEL STABILIZATION PROJECT**

THIS INTERLOCAL AGREEMENT is made by and between the Central Texas Regional Mobility Authority (the "Mobility Authority"), a political subdivision of the State of Texas, and the City of Austin, Texas, a Texas home rule municipal corporation (the "City"), hereinafter referred to as the "Parties," and each as a "Party."

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, 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, pursuant to a design/build agreement, the Mobility Authority, through its contractor (the "D/B Contractor") is currently developing the Bergstrom Expressway Project ("183 South Project"); and

WHEREAS, the 183 South Project includes construction of a structure in the channel of Boggy Creek that will protect the 183 South Project from erosion damage (the "Grade Control Structure"); and

WHEREAS, the City intends to construct structures in roughly the same location as the Grade Control Structure that will protect the City's infrastructure from further erosion damage (the "Streambank Stabilization Structures"); and

WHEREAS, professional engineering consultants for the Mobility Authority and the City have determined that combining the Grade Control Structure and the Streambank Stabilization Structures in a single channel stabilization project (the "Channel Stabilization Project") will reduce the total construction cost for the Parties; and

WHEREAS, the City has agreed to oversee and execute the design, procurement, and construction of the Channel Stabilization Project; and

WHEREAS, the Mobility Authority has agreed to fund a not-to-exceed portion of the costs of the Channel Stabilization Project.

NOW THEREFORE, in consideration of the premises and of the mutual covenants

and agreements of the Parties hereto, to be by them kept and performed as hereafter set forth, the Mobility Authority and the City do agree as follows:

AGREEMENT

1. Time Period Covered

This Agreement becomes effective on the last date of execution the Agreement by the City and the Mobility Authority (“Effective Date”). This Agreement shall be in full force and effect until the Parties have completely performed their obligations as stated herein, unless earlier terminated, as provided in section 5, below.

2. Procurement

The Mobility Authority and the City agree to apply the law applicable to the City in procuring the contractor(s) to prosecute the Channel Stabilization Project, including but not limited to, Chapter 252, Texas Local Government Code.

3. Funding and Work Responsibilities

A. Mobility Authority Contribution

- i. The Mobility Authority shall provide funding for the Channel Stabilization Project in the total amount not-to-exceed \$600,000.00 (the “Mobility Authority Contribution”). The Mobility Authority Contribution shall be paid to the City no later than forty five (45) days after the City issues final acceptance of the Channel Stabilization Project. Notwithstanding the foregoing, the Mobility Authority shall not be obligated to pay the Mobility Authority Contribution until it has been provided the opportunity to participate in the inspection for final acceptance, to identify any patent defects that must be addressed by the City’s contractor to bring all work to be in accordance with the Final Plans and the City’s contract for construction of the Channel Stabilization Project to the satisfaction of the Mobility Authority prior to issuance of final acceptance, and to concur with the issuance of final acceptance. The City shall not issue final acceptance of the Channel Stabilization Project without the written concurrence of final acceptance by the Mobility Authority.

B. Performance of Work

- i. The Mobility Authority agrees that, subject to the terms of this Agreement, the City, through its contractor and subcontractors, shall design and construct the Channel Stabilization Project.
- ii. The City shall not issue any change order that would change the structure or

function of the Channel Stabilization Project, or is in excess of \$100,000, without the written concurrence of the change order by the Mobility Authority.

C. Preparation of Plans

- i. The City has prepared or has caused to be prepared the 100% design plans, specifications, and cost estimates necessary to build the Channel Stabilization Project (the "Final Plans"), a copy of which is attached hereto as Exhibit "A." The Mobility Authority has reviewed and approved of the Final Plans.

D. Design and Construction Standards

- i. The City shall require the design and construction of the Channel Stabilization Project to comply with and conform to the following:
 - a. all applicable local and State laws, regulations, decrees, ordinances and policies;
 - b. all Federal laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B; and the Buy America provisions of 23 U.S.C § 313 and 23 CFR 635.410;
 - c. the terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
 - d. the standard specifications, standards of practice, and construction methods (collectively, "standards") which the City customarily applies to streambank stabilization facilities which include but are not limited to: (i) the Utility Criteria Manual, (ii) the Standard Products List, and (iii) Technical Criteria Manuals; and
 - e. the Final Plans.
- ii. Before beginning any work on the Channel Stabilization Project, the City shall require its contractor to carry insurance of the types and in amounts no less than those specified in the attached Exhibit "B" and shall ensure that the Mobility Authority and Texas Department of Transportation ("TxDOT") are named as an additional insured on such policies.

E. Mobility Authority's Roles and Responsibilities

In addition to the Mobility Authority Contribution described above, the Mobility

Authority shall:

- i. Provide written concurrence of inspections of the work by the City.
- ii. Review and provide written comments and approvals of any change orders subject to section 3.B.ii above.
- iii. Perform an inspection of the Channel Stabilization Project for final acceptance and concurrence with any summary of deficiencies required to achieve final acceptance subject to section 3.A.i above.

F. City Provided Services

- i. In addition to services provided by the City as specified elsewhere in this Agreement, the City shall provide the following services:
 - a. Provide for inspections of the work by the City's contractor;
 - b. Permit the Mobility Authority's inspectors and other authorized representatives to inspect the Channel Stabilization Project at all times, including to issue final acceptance;
 - c. Project management during the Channel Stabilization Project, including making progress payments to the City's contractor for work performed in accordance with the City's contract for construction of the Channel Stabilization Project;
 - d. Documentation of any field modifications occurring in the Channel Stabilization Project;
 - e. Maintain As-built plans of the Channel Stabilization Project for the Mobility Authority and the City;
 - f. Maintain a job file;
 - g. Ongoing maintenance of the Channel Stabilization Project following completion of construction;
 - h. Secure any necessary local or municipal permits not otherwise provided for under the 183 South Project, as may be required for the Channel Stabilization Project;
 - i. Secure any required waterway construction permit(s) from the US Army Corps of Engineers; and
 - j. The City's contractor shall not begin work on any portion of

Channel Stabilization Project until the Mobility Authority notifies the City in writing that it has determined that the work will not be interfered or disrupted by construction of the 183 South Project.

5. Termination

- A.** This Agreement may be terminated in the following manner:
- i. By mutual written agreement and consent of the Parties;
 - ii. By either party upon the failure of the other party to cure an Event of Default as provided below;
 - iii. By the City in the event the Mobility Authority fails to pay the Mobility Authority Contribution; or
 - iv. By the Mobility Authority in the event the City fails to issue final acceptance for the Channel Stabilization Project by December 31, 2022.
- B.** In the event either party fails to perform its material obligations as set forth in this Agreement (an "Event of Default"), the other party (the "Non-Defaulting Party") shall provide prompt written notice of such failure. The party receiving the notice (the "Defaulting Party") shall then have thirty (30) days in which to cure the Event of Default, or if the failure is such that it cannot be cured in thirty days, to make substantial and continued progress toward curing the Event of Default within a reasonable time. In the event that, after written notice as provided herein, the Defaulting Party fails, within thirty days, to cure the Event of Default, or, if the Event of Default is such that it cannot be cured in thirty days, to make substantial and continued progress toward curing the Event of Default within a reasonable time, then the Non-Defaulting Party, by further written notice to the Defaulting Party, may immediately terminate this Agreement.
- C.** In the event this Agreement is terminated by the Mobility Authority pursuant to section 5.A.ii, or 5.A.iv, the Mobility Authority shall only be responsible for the costs associated with the portion of work completed in accordance with the Final Plans prior to the date of termination that, in the Mobility Authority's sole determination, can be used by the Mobility Authority to complete construction of the Grade Control Structure.

6. Right of Access

If the Mobility Authority is the owner of any part of the Channel Stabilization Project site, the Mobility Authority shall permit the City, its contractor, or their authorized representatives to have access to the site to perform any activities required to execute the Channel Stabilization Project. The Mobility Authority will use all reasonable efforts to assist the City in acquiring access to any part of the Channel Stabilization Project site owned by TxDOT.

7. Responsibilities of the Parties Regarding Liability

THE PARTIES ACKNOWLEDGE THAT THE CITY IS NOT AN AGENT, SERVANT, OR EMPLOYEE OF THE MOBILITY AUTHORITY OR ITS D/B CONTRACTOR, NOR IS IT ENGAGED IN A JOINT ENTERPRISE WITH EITHER OF THEM. THE CITY IS RESPONSIBLE FOR ITS OWN ACTS AND DEEDS AND FOR THOSE OF ITS AGENTS OR EMPLOYEES DURING THE PERFORMANCE OF THE CHANNEL STABILIZATION PROJECT. TO THE EXTENT PERMITTED BY TEXAS LAW, THE PARTIES AGREE THAT EACH PARTY IS RESPONSIBLE, TO THE EXCLUSION OF ANY SUCH RESPONSIBILITY OF THE OTHER PARTY, OR THE OTHER PARTY'S AGENTS AND EMPLOYEES, FOR ITS OWN PROPORTIONATE SHARE OF LIABILITY, SUITS, ACTIONS, AND CLAIMS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT THAT THEY ARE CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS AND/OR THE NEGLIGENT ACTS OR OMISSIONS OF ITS EMPLOYEES, PROFESSIONAL CONSULTANTS, CONTRACTORS, AND AGENTS, DURING THEIR PERFORMANCE OF WORK FOR THE CHANNEL STABILIZATION PROJECT OR ARISING OUT OF OR CONNECTED TO THIS AGREEMENT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, PROVIDED THAT THE EXECUTION OF THIS AGREEMENT WILL NOT BE DEEMED A NEGLIGENT ACT. EACH PARTY IS NOT RESPONSIBLE FOR ANY LIABILITY, SUITS, ACTIONS, AND/OR CLAIMS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY CAUSED BY ANY OTHER ENTITY, INCLUDING THE OTHER PARTY, ITS EMPLOYEES, PROFESSIONAL CONSULTANTS, CONTRACTORS, AND/OR AGENTS. SUCH RESPONSIBILITY INCLUDES BUT IS NOT LIMITED TO ANY CLAIMS OR AMOUNTS ARISING OR RECOVERED UNDER THE "WORKERS COMPENSATION LAW," THE TEXAS TORT CLAIMS ACT, CHAPTER 101, TEXAS CIVIL PRACTICE AND REMEDIES CODE; OR ANY OTHER APPLICABLE LAWS OR REGULATIONS, ALL AS TIME TO TIME MAY BE AMENDED.

8. 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.

9. Payments Made Out of Current Revenues

It is the intent and understanding of the Parties that the obligations of each Party under this Agreement shall remain effective only so long as and provided that each Party has fully appropriated funds for performing such obligations for the Party's current fiscal year. Failure to completely obligate funds will not relieve either party of responsibility for payment of costs incurred under this Agreement.

10. Entire Agreement

This Agreement embodies the entire agreement between the Parties, supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter, and there are no oral or written agreements between the Parties or any representations made which are not expressly set forth herein.

11. Successors and Assigns

The Mobility Authority and the City each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

12. 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 Travis County, Texas.

13. Amendments

This Agreement may not be amended or modified except in writing and executed by the Parties to this Agreement and authorized by their respective governing bodies.

14. Notices

All notices to either party by the other required under this Agreement shall be delivered by receipted overnight delivery service, addressed to such party at the following addresses:

CITY: Jorge Morales, Director
City of Austin Watershed Protection Department
505 Barton Springs Road, 12th Floor
Austin, Texas 78704

WITH COPY TO: Veronica Ocanas
Assistant City Attorney
City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

MOBILITY AUTHORITY:

William Chapman
Interim Executive Director
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, Texas 78705

WITH A COPY TO:

Geoff Petrov
General Counsel
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, Texas, 78705

All notices shall be deemed given on the date so delivered, unless otherwise provided in this Agreement. Either party may change the above address by sending written notice of the change to the other party.

14. Approvals

Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by either the City or the Mobility Authority pursuant to this Agreement:

- A. Must be in writing to be effective (except if deemed granted pursuant hereto); and
- B. Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

15. Authority

Each party certifies that this Agreement has been authorized by its governing body in accordance with Chapter 791 of the Texas Government Code.

16. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

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