



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

August 25, 2021
AGENDA ITEM #12

Discuss and consider approving a memorandum of agreement with the Texas Department of Transportation, the State of Texas Historic Preservation Officer, and the City of Austin regarding the MoPac Improvement Project for the planting of trees and other improvements at Austin Memorial Park Cemetery

Strategic Plan Relevance: Regional Mobility
Department: Engineering
Contact: Mike Sexton, P.E., Acting Director of Engineering
Associated Costs: \$1,000,000
Funding Source: Mopac General Fund
Action Requested: Authorize the Executive Director to execute a memorandum of agreement

Project Description/Background: As a part of the environmental commitments of the MoPac Improvement Project (MIP) CTRMA will plant 55 15-gallon mountain laurels and associated irrigation system in the TxDOT ROW along the western boundary of the Austin Memorial Park Cemetery (AMP) property.

Previous Actions & Brief History of the Program/Project: MIP included construction of sound walls at certain locations along MoPac Expressway to minimize or mitigate noise effects. TxDOT determined that AMP is eligible for listing in the National Register of Historic Places, and the SHPO concurred.

On August 23, 2012, FHWA issued a Finding of No Significant Impact (FONSI) under NEPA for the MIP based on an Environmental Assessment prepared by TxDOT, in which TxDOT determined that there would be no adverse effects to properties listed or eligible to be listed in the National Register of Historic Places (NHRP) and that MIP landscaping should be coordinated with SHPO and the City to ensure it does not adversely affect historic properties. The City and CTRMA entered into an Interlocal

Agreement on September 12, 2012 to outline plans to minimize visual and noise impacts of the MIP on the City-owned AMP.

On March 11, 2013, TxDOT and CTRMA executed a Project Development, Operation, and Maintenance Agreement for the Undertaking, under which TxDOT acknowledged its approval of and support for the Undertaking, and CTRMA assumed responsibility for final design and construction of the Undertaking. CTRMA also assumed responsibility for compliance with applicable requirements of State and federal law regarding environmental permits, issues, and commitments during construction, including compliance with the environmental assessment prepared for the Undertaking.

TxDOT reviewed the proposed Undertaking plans, which illustrate ground-disturbing activities limited to work in existing fill soil in the existing fill soil slope on the east side of the northbound Loop 1 exit ramp to RM 2222 on the northern end of the AMP area and over fill soil placed above the previously buried retaining wall footing on the southern end, and determined no burials are likely present in the Undertaking's APE for archeological properties. The City's Parks and Recreation Department (PARC) operates AMP and is responsible for landscaping for the portion of Loop 1 right-of-way between the AMP property line and the eastern retaining wall of the Loop 1 main lanes.

TxDOT has consulted with Rescue Austin Memorial Park Cemetery (Austin RAMP) regarding the impacts of the Undertaking on AMP and has invited them to sign this MOA as a concurring party.

CTRMA previously conducted community design workshops to address designs and locations of sound walls relative to other historic properties and due to limitations at AMP that prevented the full execution of the plans outlined in the September 12, 2012 Interlocal Agreement between the City and CTRMA, TxDOT, CTRMA, SHPO, the City, and Austin RAMP returned to consultation to renegotiate minimization strategies in 2018. The attached draft agreement is the result of the renegotiated minimization strategies.

Financing: Mopac General Fund

Action requested/Staff Recommendation: Staff recommends authorizing the Executive Director to execute a memorandum of agreement among the Texas Department of Transportation, the Central Texas Regional Mobility Authority, the State of Texas

Historic Preservation Officer, and the City of Austin regarding the Loop 1 (MoPac) Improvement Project related to the planting of trees and other improvements at Austin Memorial Park Cemetery.

Backup provided:

Draft Resolution

Draft memorandum of agreement

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

RESOLUTION NO. 21-0XX

**APPROVING A MEMORANDUM OF AGREEMENT WITH THE TEXAS
DEPARTMENT OF TRANSPORTATION, THE STATE OF TEXAS HISTORIC
PRESERVATION OFFICER AND THE CITY OF AUSTIN REGARDING THE MOPAC
IMPROVEMENT PROJECT FOR THE PLANTING OF TREES AND OTHER
IMPROVEMENTS AT AUSTIN MEMORIAL PARK CEMETARY**

WHEREAS, the Environmental Assessment prepared by the Texas Department of Transportation (TxDOT) as part of the environmental review for the Mopac Improvement Project (Project) determined that landscaping plans should be coordinated with the State of Texas Historic Preservation Officer (SHPO) and the City of Austin (City) to ensure that the Project does not adversely affect historic properties; and

WHEREAS, by Resolution No. 12-057, dated August 29, 2012, the Board of Directors approved an interlocal agreement with the City outlining plans to minimize visual and noise impacts of the Project on the City-owned Austin Memorial Park Cemetery which is eligible for listing in the National Register of Historic Places; and

WHEREAS, on March 11, 2013, the Mobility Authority and TxDOT entered into a Project Development, Operation and Maintenance Agreement for landscaping and other aesthetic improvements at the Austin Memorial Park Cemetery; and

WHEREAS, due to limitations at the Austin Memorial Park Cemetery it was not possible to fully implement the plans outlined in the 2012 interlocal agreement between the Mobility Authority and the City; and

WHEREAS, the Mobility Authority has received significant input on this issue from Rescue Austin Memorial Park Cemetery, a local group dedicated to the preservation of the cemetery; and

WHEREAS, the Mobility Authority has coordinated and consulted with the City, TxDOT, SHPO and Rescue Austin Memorial Park Cemetery to re-negotiate plans to minimize potential adverse impacts of the Project on the cemetery; and

WHEREAS, the Executive Director has negotiated a Memorandum of Agreement with the City, TxDOT, and Rescue Austin Memorial Park to implement tree planting and other improvements designed to minimize the impact of the Project on the Austin Memorial Park Cemetery which is attached hereto as Exhibit A; and

WHEREAS, the Executive Director recommends approval of the proposed Memorandum of Agreement in the form or substantially the same form as attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the proposed Memorandum of Agreement for tree planting and other improvements designed to minimize the impact of the Project on the Austin Memorial Park Cemetery and authorizes the Executive Director to execute the Memorandum of Agreement on behalf of the Mobility Authority 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 25th day of August 2021.

Submitted and reviewed by:

Approved:

Geoffrey Petrov, General Counsel

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

Exhibit A

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**MEMORANDUM OF AGREEMENT
AMONG
THE TEXAS DEPARTMENT OF TRANSPORTATION,
THE CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY, THE TEXAS STATE HISTORIC
PRESERVATION OFFICER, AND THE CITY OF
AUSTIN REGARDING THE LOOP 1 (MOPAC)
IMPROVEMENT PROJECT FROM FM 734 TO CESAR
CHAVEZ STREET (CSJ 3136-01-107)**

WHEREAS, pursuant to Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, and 16 USC § 470f and 306108, and its implementing regulations at 36 CFR Part 800, this Memorandum of Agreement (MOA), inclusive of all attachments, is among the Texas Department of Transportation (TxDOT), the Central Texas Regional Mobility Authority (CTRMA), the Texas Historical Commission (THC) acting as the Texas State Historic Preservation Officer (SHPO), and the City of Austin (the City). TxDOT, CTRMA, SHPO, and the City are collectively referred to herein as the “Signatories,” and individually as a “Signatory;” and

WHEREAS, the Federal Highway Administration (FHWA) provides and administers funds to the State of Texas through TxDOT under the Federal-Aid Program, as authorized by 23 U.S.C. § 104(b); and

WHEREAS, throughout this agreement whenever the term SHPO is employed, it will also be understood to mean the THC, in its capacity as a state agency; and

WHEREAS, under the “Memorandum of Understanding between the Federal Highway Administration and the Texas Department of Transportation Concerning State of Texas’ Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327” (December 16, 2014) (NEPA Assignment MOU), the FHWA assigned its responsibilities for compliance with the National Environmental Policy Act (NEPA) and other environmental laws, including Section 106 of the NHPA in accordance with regulations set forth in 36 CFR Part 800; and

WHEREAS, FHWA and TxDOT, together with SHPO, establish protocols for streamlined Section 106 project review in Texas, including standard Areas of Potential Effect (APE) for transportation undertakings; and

WHEREAS, these protocols have been codified in both the “First Amended Programmatic Agreement for Transportation Undertakings” of 2005 and the “Programmatic Agreement Among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings” (2015 Section 106 PA); and

WHEREAS, the MoPac Improvement Project (the MIP) was cooperatively developed by TxDOT and CTRMA, with oversight by FHWA, and consists of a design/build project for the creation of one express lane in each direction, the construction of direct connectors extended to Cesar Chavez, and construction of sound walls at certain locations along MoPac Expressway to minimize or mitigate noise effects; and

WHEREAS, TxDOT determined that the Austin Memorial Park Cemetery (AMP) is eligible for listing in the National Register of Historic Places, and the SHPO concurred; and

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54 **WHEREAS**, on August 23, 2012, FHWA issued a Finding of No Significant Impact
55 (FONSI) under NEPA for the MIP based on an Environmental Assessment prepared by TxDOT,
56 in which TxDOT determined that there would be no adverse effects to properties listed or eligible
57 to be listed in the National Register of Historic Places (NHRP) and that MIP landscaping should
58 be coordinated with SHPO and the City to ensure it does not adversely affect historic properties;
59 and
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61 **WHEREAS**, the City and CTRMA entered into an Interlocal Agreement on September
62 12, 2012 to outline plans to minimize visual and noise impacts of the MIP on the City-owned
63 AMP (the Undertaking) (see Attachment A for a plan illustrating the proposed Undertaking); and
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65 **WHEREAS**, on March 11, 2013, TxDOT and CTRMA executed a Project Development,
66 Operation, and Maintenance Agreement for the Undertaking, under which TxDOT acknowledged
67 its approval of and support for the Undertaking, and CTRMA assumed responsibility for final
68 design and construction of the Undertaking; and
69

70 **WHEREAS**, under the March 11, 2013 Project Development, Operation, and
71 Maintenance Agreement for the Undertaking, CTRMA also assumed responsibility for compliance
72 with applicable requirements of State and federal law regarding environmental permits, issues, and
73 commitments during construction, including compliance with the environmental assessment
74 prepared for the Undertaking; and
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76 **WHEREAS**, in accordance with both the 2005 and 2015 Section 106 PAs, TxDOT
77 defines the Undertaking's APE for non-archeological properties as parcels falling within 150 feet
78 of proposed Right of Way and easements (see Attachment C); and
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80 **WHEREAS**, TxDOT has defined the Undertaking's APE for archeological properties
81 as the areas of ground-disturbing activities within the existing and proposed right-of-way
82 (ROW) and easements; and
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84 **WHEREAS**, AMP is within the Undertaking's APE; and
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86 **WHEREAS**, TxDOT desires to minimize potential adverse impacts from the MIP on
87 AMP, which is eligible for listing in the NHRP, and has consulted with the SHPO pursuant to 36
88 CFR Part 800; and
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90 **WHEREAS**, TxDOT reviewed the proposed Undertaking plans, which illustrate
91 ground-disturbing activities limited to work in existing fill soil in the existing fill soil slope on
92 the east side of the northbound Loop 1 exit ramp to RM 2222 on the northern end of the AMP
93 area and over fill soil placed above the previously buried retaining wall footing on the southern
94 end, and determined no burials are likely present in the Undertaking's APE for archeological
95 properties; and
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97 **WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), TxDOT has notified the
98 Advisory Council on Historic Preservation (ACHP) of its determination regarding effects on
99 properties listed or eligible to be listed in the NRHP with specified documentation, and the
100 ACHP has chosen *not to* participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);
101 and
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103 **WHEREAS**, TxDOT consulted with the City regarding the Undertaking; and
104

- 157 will excavate to the maximum depth of soil over the footer.
- 158 iii. CTRMA will install the main irrigation trunk line along the retaining wall where there
- 159 are concrete footers, with branch lines to tree roots as needed;
- 160 iv. CTRMA will control and maintain the irrigation system for the first 36 months after
- 161 installation;
- 162 v. CTRMA will transfer ownership and control and maintenance of the irrigation system
- 163 to the City 36 months after planting and installation; and
- 164 vi. The City will maintain the irrigation system and all trees installed pursuant to this
- 165 Undertaking in perpetuity.
- 166 C. CTRMA will follow the TxDOT Standard Specifications for Construction and
- 167 Maintenance of Highways, Streets, and Bridges for the tree installation;
- 168 D. CTRMA will have a professional archeologist monitor the proposed locations of the trees
- 169 to be planted adjacent to the cemetery during excavation and installation.
- 170 i. CTRMA will revise the previously issued Texas Antiquities Permit #8329 prior to
- 171 beginning the proposed tree planting. Any new or revised permit scopes of work shall
- 172 be consistent with the research design in Permit Number 8329, updating the scope of
- 173 work to be consistent with the most current design plan for the plantings and associated
- 174 excavations.
- 175 ii. CTRMA will submit the Texas Antiquities Permit application to TxDOT for review
- 176 prior to its submittal to the THC.
- 177 iii. Upon receipt of a revised Texas Antiquities Permit from the THC, CTRMA will
- 178 conduct monitored excavations for the plantings. The archeological monitor shall have
- 179 the authority to stop excavation in order to evaluate or treat any finds made during
- 180 excavation.
- 181 iv. Should possible human remains be discovered during excavation, CTRMA will take
- 182 the following steps:
- 183 (a) CTRMA will halt the excavation at that location, promptly notify PARD of the
- 184 find, and identify another location for excavation and planting of the tree. If
- 185 PARD determines that there are human remains present, it will document the
- 186 find using field notes and photographs and will mark the location of the remains
- 187 using hand-held GPS units. Excavations may continue elsewhere as long as they
- 188 do not affect the possible human remains or impede access to that location. Upon
- 189 completion of the documentation process, PARD will rebury the remains and
- 190 notify CTRMA that it has completed its work at the location.
- 191 (b) CTRMA shall notify designated representatives of the other Signatories of the
- 192 find.
- 193
- 194 E. Any Signatories deviating from this schedule or plan shall notify other parties in writing
- 195 and negotiate a new schedule or plan terms, which will then be reported according to
- 196 Stipulation V of this agreement, submitting amendments if needed per Stipulation VII.
- 197 F. The measures described in this Stipulation I will survive the expiration or termination of
- 198 this MOA.

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200 **II. REMAINING FUNDS**

- 201 A. The budget for the Undertaking as described herein is \$46,267.
- 202 B. Any funds remaining after the installation of trees and the irrigation system will be given
- 203 to the City for future maintenance of the landscape improvements inside the AMP's fence
- 204 line. Any work beyond maintenance performed in the AMP will be carried out by the
- 205 City, or its delegate, according to the appropriate local, state, and federal cultural
- 206 resources regulations and coordinated with the THC, Austin RAMP, and other potential
- 207 consulting parties as required.
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209 **III. TERM**

210 Except as specified herein, this MOA is effective on the date the last Signatory signs it and
211 terminates three (3) years from that date or when the Undertaking is complete, whichever is sooner
212 (the Term). If the Undertaking is not complete when the MOA terminates, TxDOT shall, prior
213 to work continuing, either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6, or (b) request
214 comment from, take into account, and respond to the comments of the ACHP under 36 C.F.R. §
215 800.7. Prior to such time, TxDOT may consult with the other signatories to reconsider the terms
216 of the MOA and amend it, including extension of its duration, in accordance with Stipulation VII
217 below.

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219 **IV. POST-REVIEW DISCOVERIES**

220 Any post-review discoveries will be addressed in accordance with the procedures set forth in
221 Stipulation XIII: Post Review Discoveries of the 2015 Section 106 PA and any successor
222 agreements.

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224 **V. MONITORING AND REPORTING**

225 Annually during the Term of this MOA, CTRMA shall provide all Signatories a summary report
226 detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes
227 proposed, any problems encountered, and any disputes and objections received in CTRMA or
228 TxDOT's efforts to carry out the terms of this MOA.

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230 **VI. DISPUTE RESOLUTION**

231 Disputes will be resolved using the process outlined in Stipulations X(B), X(C), and XI(F) of the
232 2015 Section 106 PA and any successor agreements.

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234 **VII. AMENDMENTS**

235 This MOA may be amended when such an amendment is agreed to in writing by all Signatories.
236 The amendment will be effective on the date a copy signed by all of the Signatories is filed with
237 the ACHP.

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239 **VIII. TERMINATION**

240 This MOA shall terminate upon the completion of all CTRMA responsibilities set forth in
241 Stipulations I & II, above. However, the City's obligation to maintain the irrigation system and
242 trees in perpetuity shall survive the expiration or termination of this MOA. If any Signatory to this
243 MOA determines that its terms will not or cannot be carried out, that Signatory shall immediately
244 consult with the other Signatories to attempt to develop an amendment per Stipulation VII, above.
245 Except as specified herein, if within thirty (30) days (or another time period agreed to by all
246 Signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon
247 written notification to the other Signatories.

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249 If the MOA is terminated pursuant to this Stipulation, and prior to work continuing on the
250 undertaking, TxDOT must either (a) execute a new MOA pursuant to 36 CFR § 800.6 or (b)
251 request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7.
252 TxDOT shall notify the Signatories as to the course of action it will pursue.

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255 **EXECUTION** of this MOA by Signatories, and implementation of its terms, is evidence that
256 TxDOT has taken into account the effects of this undertaking on historic properties and afforded the
257 ACHP an opportunity to comment. This MOA will be considered executed on the date of the last
258 Signatory's signature below.

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260 **Attachments:**

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262 Attachment A: Plans and Renderings for Undertaking
263 Attachment B: Austin Energy Specifications and Conditions
264 Attachment C: APE Map
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SIGNATORIES

[Texas Department of Transportation]

_____ Date _____
Tucker Ferguson, P.E., Austin District Engineer

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[Texas State Historic Preservation Officer]

Date

Mark Wolfe, State Historic Preservation Officer

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[Central Texas Regional Mobility Authority]

_____ Date _____

James M. Bass, Executive Director

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291 [City of Austin]
292
293 **By Its Parks and Recreation Department**

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296 _____ Date _____

297 **Kimberly McNeeley, Director**

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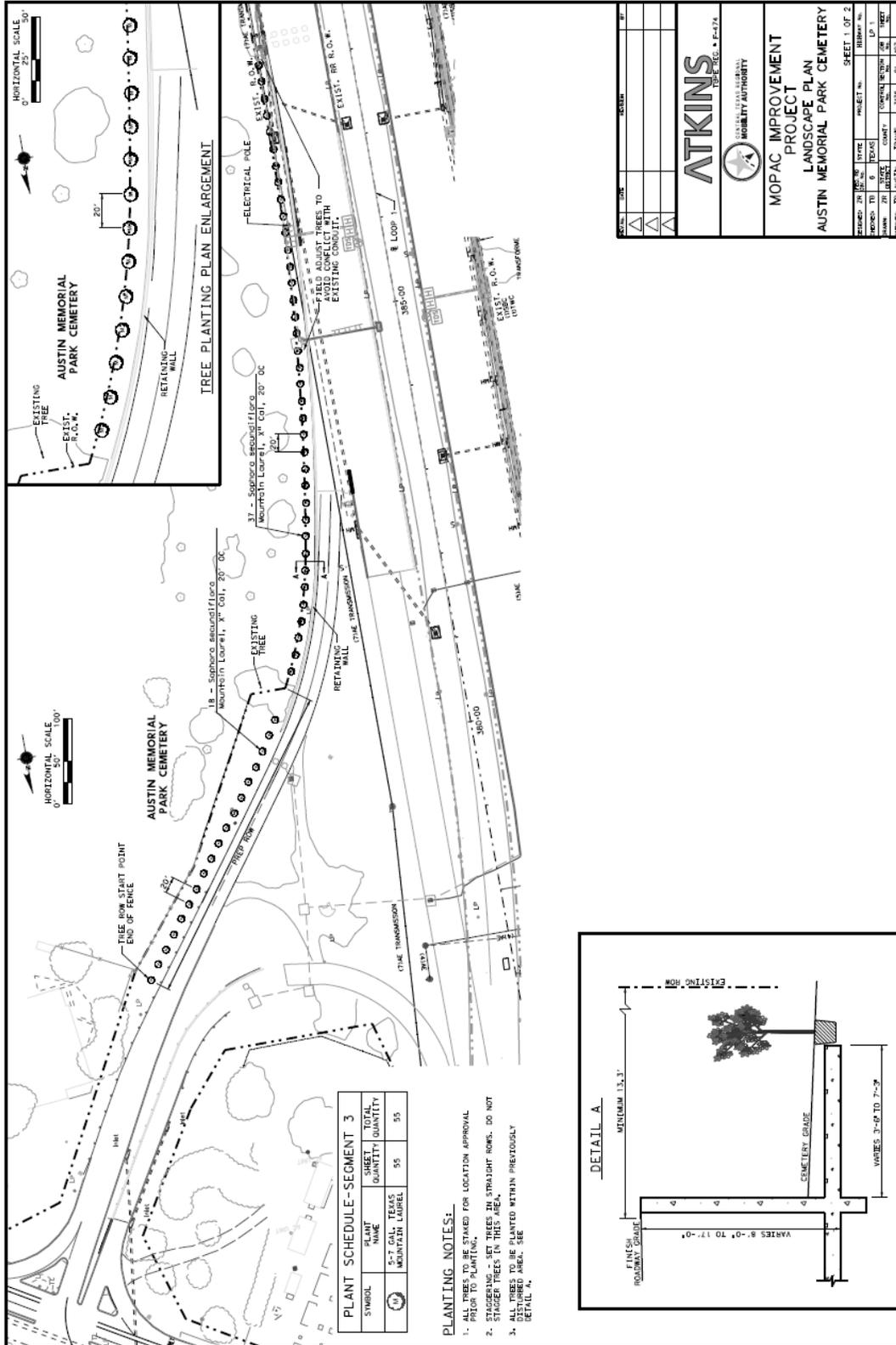
CONCURRING PARTY:

[Austin RAMP]

_____ Date _____
Sharon Blythe, Austin RAMP

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ATKINS
THE DESIGN PARTNERS

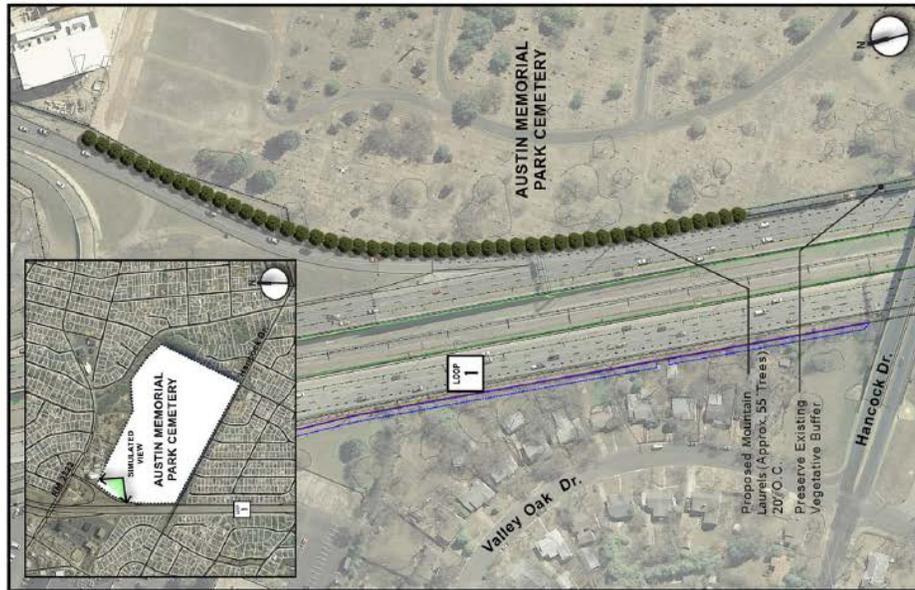
MOPAC IMPROVEMENT PROJECT
LANDSCAPE PLAN
AUSTIN MEMORIAL PARK CEMETERY

MOBILITY AUTHORITY

PROJECT NO. _____ SHEET 1 OF 2
 DRAWN BY: _____ DATE: _____
 CHECKED BY: _____ DATE: _____
 DESIGNED BY: _____ DATE: _____

MOPAC LANDSCAPE ENHANCEMENTS

November 2019



EXISTING CONDITIONS

SIMULATED TREE PLANTINGS — TEXAS MOUNTAIN LAUREL SCREENING (10 YEAR GROWTH)

Existing Conditions show little screening of MoPac's retaining wall and vehicular travel.

The simulated tree plantings represent approximately ten years of plant growth after installation. To maximize their screening effect, a spacing of approximately 20 ft. is recommended.

Texas Mountain Laurels average 10-15ft. in size depending on growing conditions. They are very popular as a native evergreen ornamental tree and valued for their handsome, dark green foliage and lush early spring blooms. It is drought-tolerant, prefers rocky limestone soil, and is native from central Texas west to New Mexico.

AUSTIN MEMORIAL PARK CEMETERY



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Attachment B: Austin Energy Specifications and Conditions

Work Performed Within Austin Energy Transmission Corridor

- a) Austin Energy (AE) does not typically allow fences to run parallel to or within a transmission corridor, and no fencing is to be constructed under the terms of this MOU. Within the Transmission Corridor, construction activities and equipment used to install landscaping must be limited to a height (or reach) of 14 feet (specifically including without limitation, equipment such as lifts or trenching equipment and augers used for drilling holes).
- b) AE standard specifications require that a clearance of 25 feet be maintained around each transmission pole, and that no structures or landscaping other than turf be allowed within this area. AE has made certain allowances for sound walls constructed along MoPAC with the express condition that any portion of a sound wall constructed within 25 feet of a transmission pole be constructed of removable panels. A site specific review of available set-up locations for performing aerial maintenance work on the Austin Energy transmission lines and structures located within the area subject to the terms of this MOU has determined that setup for aerial maintenance work would be performed by AE from a closed lane on MoPac. Accordingly, Austin Energy has consented in this limited instance to the planting and maintenance of utility compatible mountain laurel trees to be planted 15' from Transmission Poles within the Memorial Park Cemetery transmission corridor. No landscaping other than turf and mountain laurel at 15' from the Transmission Poles is allowed. No other variances from Austin Energy clearances are allowed.
- c) It is AE's preference, but not its requirement, that no landscaping other than turf be planted in the minimal 8'-10' Texas Department of Transportation easement directly below transmission lines.
- d) AE list of utility-compatible trees is provided in the following link: <https://austinenergy.com/ae/residential/residential-services/tree-pruning/tree-replacement-list>; Mountain laurels are on that list.

Attachment C: APE Map

