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 (PARD) 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
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
WHEREAS, 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; and

WHEREAS, 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 (the Undertaking) (see Attachment A for a plan illustrating the proposed Undertaking); and

WHEREAS, 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; and

WHEREAS, under the March 11, 2013 Project Development, Operation, and Maintenance Agreement for 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; and

WHEREAS, in accordance with both the 2005 and 2015 Section 106 PAs, TxDOT defines the Undertaking’s APE for non-archeological properties as parcels falling within 150 feet of proposed Right of Way and easements (see Attachment C); and

WHEREAS, TxDOT has defined the Undertaking’s APE for archeological properties as the areas of ground-disturbing activities within the existing and proposed right-of-way (ROW) and easements; and

WHEREAS, AMP is within the Undertaking’s APE; and

WHEREAS, TxDOT desires to minimize potential adverse impacts from the MIP on AMP, which is eligible for listing in the NHRP, and has consulted with the SHPO pursuant to 36 CFR Part 800; and

WHEREAS, 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; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), TxDOT has notified the Advisory Council on Historic Preservation (ACHP) of its determination regarding effects on properties listed or eligible to be listed in the NRHP with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(ii); and

WHEREAS, TxDOT consulted with the City regarding the Undertaking; and
WHEREAS, the City’s Parks and Recreation Department (PARD) 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, an area that also comprises an Austin Energy utility corridor, except that PARD is not responsible for landscaping the fenced-in portion of this right-of-way; and

WHEREAS, TxDOT, for the FHWA, has consulted with the Alabama-Coushatta Tribe of Texas, the Caddo Nation of Oklahoma, the Apache Tribe of Oklahoma, the Kiowa Indian Tribe of Oklahoma, the Comanche Nation of Oklahoma, the Mescalero Apache Tribe, and the Tonkawa Tribe of Indians of Oklahoma, for which no historic properties or properties of religious or cultural significance were identified; and

WHEREAS, TxDOT has consulted with Rescue Austin’s 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; and

WHEREAS, CTRMA previously conducted community design workshops to address designs and locations of sound walls relative to other historic properties; and

WHEREAS, 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; and

NOW, THEREFORE, TxDOT, SHPO, the City, and CTRMA agree that the Undertaking shall be implemented in accordance with the following stipulations in order to minimize the adverse impacts of the MIP on the AMP.

STIPULATIONS

The following measures will be implemented:

I. TREE INSTALLATION

A. CTRMA will plant 55 15-gallon mountain laurels (*Sophora secundiflora*) in the TxDOT ROW along the western boundary of the AMP property, as shown in Attachment A, subject to the following conditions:

   i. CTRMA will follow Austin Energy requirements for installation of trees within the utility corridor (see Attachment B);
   
   ii. CTRMA will ensure that excavation and installation of trees does not impact the retaining wall footers; and
   
   iii. CTRMA will plant the trees approximately 20 feet apart and within the disturbed soil between the retaining wall footers and TxDOT’s ROW limits, but no mountain laurels shall be planted within 15’ of Austin Energy transmission poles; and
   
   iv. CTRMA will replace any of the original 55 trees that do not survive the first 24 months following the initial planting described in this Section A.

B. CTRMA will install an irrigation system and drip line for the trees in accordance with the Texas Commission on Environmental Quality’s landscape irrigation requirements (see Texas Administrative Code Chap. 344) and subject to the following conditions:

   i. CTRMA will coordinate with the City regarding work related to the installation of the irrigation.
   
   ii. CTRMA will install irrigation lines within TxDOT ROW and excavated to 18 inches, except when depth of soil over the footer is less than 18 inches, in which case CTRMA
will excavate to the maximum depth of soil over the footer.

iii. CTRMA will install the main irrigation trunk line along the retaining wall where there are concrete footers, with branch lines to tree roots as needed;

iv. CTRMA will control and maintain the irrigation system for the first 36 months after installation;

v. CTRMA will transfer ownership and control and maintenance of the irrigation system to the City 36 months after planting and installation; and

vi. The City will maintain the irrigation system and all trees installed pursuant to this Undertaking in perpetuity.

C. CTRMA will follow the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges for the tree installation;

D. CTRMA will have a professional archeologist monitor the proposed locations of the trees to be planted adjacent to the cemetery during excavation and installation.

i. CTRMA will revise the previously issued Texas Antiquities Permit #8329 prior to beginning the proposed tree planting. Any new or revised permit scopes of work shall be consistent with the research design in Permit Number 8329, updating the scope of work to be consistent with the most current design plan for the plantings and associated excavations.

ii. CTRMA will submit the Texas Antiquities Permit application to TxDOT for review prior to its submittal to the THC.

iii. Upon receipt of a revised Texas Antiquities Permit from the THC, CTRMA will conduct monitored excavations for the plantings. The archeological monitor shall have the authority to stop excavation in order to evaluate or treat any finds made during excavation.

iv. Should possible human remains be discovered during excavation, CTRMA will take the following steps:

(a) CTRMA will halt the excavation at that location, promptly notify PARD of the find, and identify another location for excavation and planting of the tree. If PARD determines that there are human remains present, it will document the find using field notes and photographs and will mark the location of the remains using hand-held GPS units. Excavations may continue elsewhere as long as they do not affect the possible human remains or impede access to that location. Upon completion of the documentation process, PARD will rebury the remains and notify CTRMA that it has completed its work at the location.

(b) CTRMA shall notify designated representatives of the other Signatories of the find.

E. Any Signatories deviating from this schedule or plan shall notify other parties in writing and negotiate a new schedule or plan terms, which will then be reported according to Stipulation V of this agreement, submitting amendments if needed per Stipulation VII.

F. The measures described in this Stipulation I will survive the expiration or termination of this MOA.

II. REMAINING FUNDS

A. The budget for the Undertaking as described herein is $46,267.

B. Any funds remaining after the installation of trees and the irrigation system will be given to the City for future maintenance of the landscape improvements inside the AMP’s fence line. Any work beyond maintenance performed in the AMP will be carried out by the City, or its delegate, according to the appropriate local, state, and federal cultural resources regulations and coordinated with the THC, Austin RAMP, and other potential consulting parties as required.
III. TERM

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

IV. POST-REVIEW DISCOVERIES

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

V. MONITORING AND REPORTING

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

VI. DISPUTE RESOLUTION

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

VII. AMENDMENTS

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

VIII. TERMINATION

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

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

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

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

[Texas Department of Transportation]

Date

Tucker Ferguson, P.E., Austin District Engineer

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mark wolfe, state historic preservation officer
[Central Texas Regional Mobility Authority]

Date ____________________________

James M. Bass, Executive Director
[City of Austin]

By Its Parks and Recreation Department

_____________________________ Date ________________

Kimberly McNeely, Director

Kimberly McNeely, Director
MOA for Loop 1 (MOPAC) Improvement Project (CSJ 3136-01-107)
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