



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

February 28, 2024
AGENDA ITEM #10

Discuss and consider approving Amendment No. 1 to the agreement with Great Hills Constructors for the 183 North Mobility Project to modify the early completion incentive and to add an interim milestone for early lane opening and associated incentive

Strategic Plan Relevance:	Collaboration
Department:	Engineering
Contact:	Mike Sexton, P.E., Director of Engineering
Associated Costs:	\$ 0
Funding Source:	183N Project Funds
Action Requested:	Consider and act on draft resolution

Project Description/Background - The 183 North Mobility Project aims to improve mobility, reduce congestion and provide more reliable travel times for transit and emergency responders along the nine-mile stretch of US 183 between SH 45 North and MoPac. The Project includes the construction of two express lanes in each direction and the addition of non-tolled lanes to four in each direction. Express lane direct connectors will be constructed with MoPac to the south and operational improvements will be added to southbound MoPac. The Project also includes new shared use path connections and new sidewalks and cross-street connections for bicycles and pedestrians.

Previous Actions & Brief History of the Program/Project:

- April 27, 2016 - the Mobility Authority received environmental approval for the development of the 183 North Project through the issuance of a Finding of No Significant Impact (FONSI) by the Texas Department of Transportation ("TxDOT").
- April 26, 2017 - the Mobility Authority exercised its option as a local toll project

entity to develop, finance, construct, and operate the 183 North Project.

- January 31, 2019 - the Texas Transportation Commission approved the release of \$104.2 million in federal funding for the non-tolled portion of the Project.
- September 11, 2019 - the Board authorized the Mobility Authority Executive Director, in coordination with the Board Chairman, to negotiate and execute a Project Development Agreement (PDA) with TxDOT for the 183 North Mobility Project. The PDA was subsequently executed on November 25, 2019. The PDA specifically anticipated a future update to the terms of the agreement after an Apparent Best Value Proposer (ABVP) was determined after proposal submission.
- February 8, 2021, the Mobility Authority Board awarded the design-build contract to the Apparent Best Value Proposer (ABVP), Great Hills Constructors, a joint venture between Archer Western Construction, LLC and Sundt Construction, Inc.

Proposed Amendment:

Contract Amendment #1 will introduce an interim completion and modified incentive payment for the early opening of an additional general-purpose lane by August 18, 2024, for a total of four in each direction of travel along the US 183 corridor.

The early incentive will make available \$6,000,000 to the contractor upon opening of the additional general-purpose lanes by the interim completion date (8/18/24). Such incentive amount will be reduced by \$50,000/day per direction of travel for each day past the interim completion date for which the contractor has not achieved interim completion.

Further, if the contractor achieves both interim completion and the substantial completion by the respective deadlines set forth in the contract, the contractor will receive an additional incentive payment of \$2,000,000.

Finally, notwithstanding the contractor's ability to meet the interim completion deadline (and receive the \$6,000,000 interim completion incentive) the incentive for early achievement of substantial completion may also include an additional \$50,000/day, for each day the conditions of substantial completion are met prior to the substantial completion deadline for an amount not to exceed \$2,000,000.

Additionally, the action will grant the Executive Director authority to execute change orders up to \$10,000,000 in association Contract Amendment #1.

Financing: 183N Project Funds

Action requested/Staff Recommendation: Staff recommends that, contingent upon TxDOT approval, the Board authorize the executive director to execute Amendment #1, in similar form to the attached, to the Contract with Great Hills Constructors on the 183N Project.

Backup provided: Draft Resolution
 Draft Contract

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

RESOLUTION NO. 24-0XX

**APPROVING AMENDMENT NO. 1 TO THE DESIGN-BUILD CONTRACT WITH GREAT HILLS
CONSTRUCTORS FOR AN INTERIM MILESTONE FOR
THE 183 NORTH MOBILITY PROJECT**

WHEREAS, by Resolution No. 17-023, dated April 26, 2017, the Central Texas Regional Mobility Authority Board of Directors (Board) exercised its option as a local toll project entity to develop, finance, construct, and operate the 183 North Mobility Project that includes construction of two express lanes in each direction along a 9-mile stretch of US 183 between SH 45/RM 620 and Mo Pac, the addition of a fourth general purpose lane in each direction and connections from the 183 North Express Lanes to the MoPac Express Lanes, as well as new shared use path connections, new sidewalks, and cross-street connections for bicycles/pedestrians; and

WHEREAS, by Resolution No. 21-011, the Board approved a design-build contract with Great Hills Constructors (the "Contract") to design and construct the 183 North Mobility Project; and

WHEREAS, the Executive Director and Great Hills Constructors have negotiated proposed Amendment No. 1 to the Contract to add an interim milestone for the early opening of an additional general-purpose lane for a total of four in each direction of travel along the US 183 corridor, as well as providing for related incentive payments of up to \$10,000,000 for achieving the interim milestone and early completion of the 183 North Mobility Project, a copy of which is attached hereto as Exhibit A; and

WHEREAS, contingent upon receiving concurrence from the Texas Department of Transportation (TxDOT) the Executive Director recommends approval of proposed Amendment No. 1 to the Contract and that the Board authorize the Executive Director to negotiate and execute change orders with Great Hills Constructors, in amounts up to \$10,000,000, pursuant to the terms of Amendment No. 1.

NOW THEREFORE, BE IT RESOLVED, that contingent upon receiving concurrence from TxDOT the Executive Director is hereby authorized and directed to finalize and execute Amendment No. 1 to the Contract on behalf of the Mobility Authority, in the form or substantially the same form attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, the Executive Director is hereby authorized to negotiate and execute change orders under Amendment No. 1 with Great Hills Constructors in amounts up to \$10,000,000, pursuant to the terms of Amendment No. 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 28th day of February 2024.

Submitted and reviewed by:

Approved:

James M. Bass
Executive Director

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

Exhibit A

**AMENDMENT No. 1 to DESIGN/BUILD AGREEMENT
(183 North Project)**

This Amendment No. 1 to Design-Build Agreement (the “Amendment”) is made and entered into to be effective as of [____], 2024 (the “Effective Date”) by and between the Central Texas Regional Mobility Authority (“Mobility Authority”) and Great Hills Constructors (“DB Contractor”), with reference to the following facts:

A. Mobility Authority and DB Contractor are parties to that certain Design-Build Agreement dated as of March 2, 2021 with respect to the 183 North Mobility Project (the “DB Agreement”).

B. The parties desire to provide for an interim completion of a portion of the 183 North Mobility Project, and related incentive payments.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the undersigned parties hereby agree as follows:

1. Defined Terms.

- a. All capitalized terms used herein, unless otherwise defined in this Amendment, shall have the meanings set forth in Exhibit A to the DB Agreement.
- b. The defined term “Incentive Payment” is hereby deleted from Exhibit A to the DB Agreement.
- c. The following defined terms are hereby added to Exhibit A to the DB Agreement:

Early Completion Incentive Payment shall have the meaning set forth in *Section 13.4* of this DB Agreement.

Interim Completion shall mean opening to traffic four (4) general purpose lanes in the northbound direction from Loop 360 to just north of Anderson Mill Road, and the opening to traffic of four (4) general purpose lanes in the southbound direction from Lakeline Mall Drive to south of the exit to southbound MoPac.

Interim Completion Deadline shall mean the deadline for achieving Interim Completion as more fully described in *Section 5.2.2* of this DB Agreement.

Interim Completion Incentive shall mean the incentive for achieving Interim Completion as described in *Section 13.8* of this DB Agreement.

Interim Completion Incentive Payment shall have the meaning set forth in *Section 13.8* of this DB Agreement.

2. **Revisions to DB Agreement Section 5.2.** Section 5.2 of the DB Agreement shall be amended to read in its entirety as follows:

5.2 Guaranteed Completion

5.2.1 Completion Deadline

5.2.1.1 Subject to the adjustments of the Completion Deadline and Acceptance Deadline as provided in the Contract Documents, the DB Contractor shall achieve Substantial Completion of the Project no later than 1,519 Days after the issuance of NTP1. If the Mobility Authority elects to issue NTP3 for the Deferred Work, then the DB Contractor shall achieve Substantial Completion of the Project no later than 1,519 Days after the issuance of NTP1.

5.2.1.2 The deadline for Substantial Completion set forth above, as it may be extended hereunder, is referred to herein as the “**Completion Deadline.**”

5.2.2 Interim Completion Deadline

DB Contractor shall achieve Interim Completion by no later than 1,221 Days after the issuance of NTP1. The deadline for Interim Completion is referred to herein as the “**Interim Completion Deadline.**”

5.2.3 Acceptance Deadline

The DB Contractor shall achieve Final Acceptance of the Project within 120 Days after Substantial Completion of the Project. The deadline for Final Acceptance of the Project, as such deadline may be extended hereunder, is referred to herein as the “**Acceptance Deadline.**”

5.2.4 No Time Extensions

Except as otherwise specifically provided in *Section 14.10*, the Mobility Authority shall have no obligation to extend the Interim Completion Deadline. Except as otherwise specifically provided in *Section 14*, the Mobility Authority shall have no obligation to extend the Completion Deadline or Acceptance Deadline, and the DB Contractor shall not be relieved of its obligations to achieve (a) the milestones described in the Project Schedule; (b) Substantial Completion of the Project by the Completion Deadline; or (c) Final Acceptance by the Acceptance Deadline.

3. **Revisions to DB Agreement Section 13.4.** Section 13.4 of the DB Agreement shall be amended to read in its entirety as follows:

13.4 Compensation for Early Completion

As an inducement to the DB Contractor to (a) achieve the Interim Completion Incentive described in *Section 13.8* below, and (b) complete the items set forth in *Section 20.1.1 (a) – (e)* in advance of the original Completion Deadline, the Mobility Authority

agrees to pay the DB Contractor a bonus for completing the items set forth in Section 20.1.1 (a) – (e) prior to the original Completion Deadline (the "**Early Completion Incentive Payment**"), as follows:

13.4.1 If the DB Contractor achieves Interim Completion, as determined by the Mobility Authority in its sole discretion, by the Interim Completion Deadline, and the items set forth in Section 20.1.1 (a) – (e) have occurred prior to the original Completion Deadline, the DB Contractor shall be entitled to receive (a) \$2,000,000; and (b) \$50,000 per Day for each Day items set forth in Section 20.1.1 (a) – (e) have occurred prior to the original Completion Deadline, up to a capped amount of \$2,000,000 for completing the items set forth in Section 20.1.1 (a) – (e).

13.4.2 If the DB Contractor does not achieve Interim Completion, as determined by the Mobility Authority in its sole discretion, by the Interim Completion Deadline, and the items set forth in Section 20.1.1 (a) – (e) have occurred prior to the original Completion Deadline, the DB Contractor shall be entitled to receive \$50,000 per Day for each Day items set forth in Section 20.1.1 (a) – (e) have occurred prior to the original Completion Deadline , up to a capped amount of \$2,000,000 for completing the items set forth in Section 20.1.1 (a) – (e).

13.4.3 Early Completion Incentive Payments under Section 13.4.1 shall be paid by the Mobility Authority to the DB Contractor in accordance with the Draw Request provisions contained in Section 13.3 hereof. The Mobility Authority shall have the right to offset any amounts owing from the DB Contractor to the Mobility Authority against amounts payable under this Section 13.4. An amount of up to \$1,000,000 in Early Completion Incentive Payments will be retained until Final Acceptance is achieved.

13.4.4 If the Completion Deadline has been extended beyond the original deadline, and the DB Contractor achieves Substantial Completion prior to said extended deadline, the DB Contractor shall be entitled to receive Early Completion Incentive Payment for Substantial Completion prior to such extended deadline and after the original Completion Deadline. The amount of such payment shall be calculated in accordance with Section 13.4.1 (replacing reference to the "original Completion Deadline" therein with reference to the "extended Completion Deadline" and shall be subject to the other provisions of this Section 13.4).

4. New Section 13.8 to the DB Agreement. Section 13.8 shall be added to the DB Agreement to read in its entirety as follows:

13.8 Interim Completion Incentive

As an inducement for the DB Contractor to achieve Interim Completion, the Mobility Authority agrees to pay the DB Contractor a bonus (the "**Interim Completion Incentive Payment**"), as follows:

13.8.1 If the DB Contractor achieves Interim Completion, as determined by the Mobility Authority in its sole discretion, by the Interim Completion Deadline, the

DB Contractor shall be entitled to receive an Interim Completion Incentive Payment of \$6,000,000. For each day past the Interim Completion Deadline for which the DB Contractor has not achieved Interim Completion, the amount of the Interim Completion Incentive Payment shall be reduced by \$50,000 per day, per direction of travel until (a) the DB Contractor achieves Interim Completion; or (b) the amount of the Interim Completion Incentive Payment is \$0.

13.8.2 The Interim Completion Incentive Payment, if any, shall be paid by the Mobility Authority to the DB Contractor in accordance with the Draw Request provisions contained in Section 13.3 hereof. The Mobility Authority shall have the right to offset any amounts owing from the DB Contractor to the Mobility Authority against amounts payable under this Section 13.8.

5. Revisions to DB Agreement Section 14.1.1.1. Section 14.1.1.1 of the DB Agreement shall be amended to read in its entirety as follows:

14.1.1.1. Change Orders

The term "**Change Order**" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 14. The Mobility Authority may issue unilateral Change Orders as specified in Section 14.2. Change Orders may be requested by the DB Contractor only pursuant to Section 14.3. Change Orders may be issued for the following purposes (or combination thereof):

- a) to modify the scope of the Work;
- b) to revise the Interim Completion Deadline, Completion Deadline or the Acceptance Deadline;
- c) to revise the DB Price; and
- d) to revise other terms and conditions of the Contract Documents.

Upon the Mobility Authority's approval of the matters set forth in the Change Order form, whether it is initiated by the Mobility Authority or the DB Contractor, the Mobility Authority shall execute such Change Order form.

6. Revisions to DB Agreement Section 14.10. Section 14.10 of the DB Agreement shall be amended to read in its entirety as follows:

14.10 Force Majeure Events

Subject to the limitations contained in, and upon the DB Contractor's fulfillment of all applicable requirements of, this Section 14, the Mobility Authority shall issue Change Orders (a) to compensate the DB Contractor for additional costs incurred arising directly from Force Majeure Events (excluding Acceleration Costs or delay and disruption damages other than for any Force Majeure Events which are included in the definition of Mobility Authority-Caused Delay), and (b) to extend the applicable Interim Completion Deadline,

Completion Deadline, and/or Acceptance Deadline as the result of any delay in the Critical Path directly caused by a Force Majeure Event, to the extent that it is not possible to work around the problem.

14.10.1 Notwithstanding the foregoing, the DB Contractor shall be fully responsible for, and thus shall not receive a Change Order with respect to, any delays of up to 120 Days per location or an aggregate amount of 120 Days for all such delays, resulting from the need to work around locations impacted by the type of event described in clause (c) of the definition of "Force Majeure Event" (that is, the discovery of previously unknown archeological, paleontological or cultural resources on the Site). The Mobility Authority shall not be responsible for any Acceleration Costs or other costs attributable to any delays relating to such event or situation, other than any Acceleration Costs and other incremental costs directly attributable to the portion of the type of delay described above in excess of 120 Days per location or in excess of an aggregate amount of 120 Days for all such delays; provided that, the DB Contractor shall be entitled to a Change Order for additional costs and/or time only where there is a delay to the Critical Path after expiration of such 120 Day work-around period. If a delay resulting from the need to work around a previously unknown archeological, paleontological or cultural resource is concurrent with another delay which is the DB Contractor's responsibility hereunder, then such delay shall be borne 100% by the DB Contractor and shall not be counted towards the 120-Day aggregate cap. If a delay resulting from the need to work around a previously unknown archeological, paleontological or cultural resource is concurrent with another delay resulting from the need to work around another previously unknown archeological, paleontological or cultural resource, only one of the delays shall be applied to the 120-Day period of the DB Contractor's responsibility or the 120-Day aggregate cap. The foregoing shall not be deemed to preclude the DB Contractor from obtaining a Change Order with respect to any requirement that it perform mitigation measures relating to any such resources or materials which are not otherwise its responsibility under the terms of the Contract Documents.

7. **Revisions to DB Agreement, Exhibit C, Section 22.5.2.1.** Section 22.5.2.1 of Exhibit C to the DB Agreement shall be amended to read in its entirety as follows:

22.5.2.1.1 Allowable Non-Peak Lane Closures

Single-lane express lane, general purpose lanes, frontage road, shoulder, ramp, direct connector, and cross-street lane closures are permitted throughout the Project during the time frames identified in **Table 22-4**. In locations where the general purpose lanes or frontage roads have three lanes of traffic, two lanes may be closed during the periods identified in **Table 22-4**. One lane must remain open at all times unless approved by the Mobility Authority. In locations where general purpose lanes have four lanes, three lanes may be closed during the periods identified in **Table 22-4**. One lane must remain open at all times unless approved by the Mobility Authority.

Table 22-1: Allowable Non-Peak Lane Closures

Day of Week	Morning	Evening
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Monday – Friday	12:00 Midnight to 5:00 AM	9:00 PM to 12:00 Midnight
Saturday & Sunday	12:00 Midnight to 8:00 AM	9:00 PM to 12:00 Midnight

8. Revisions to DB Agreement, Exhibit C, Table 22-7. Table 22-7 of Exhibit C to the DB Agreement shall be amended to read in its entirety as follows:

Table 22-1: Lane Assessment Fees – General Purpose/Frontage Roads

Direction	Segment	Exist. # of Lanes	Applicable Closures	Morning Peak Hours (5–9 AM M–F)	Midday Hours (9 AM– 3 PM M–F)	Evening Peak Hours (3–9 PM M–F)	Weekend Peak Hours (8 AM–9 PM Sat & 8 AM – 9 PM Sun)
NB	Project Limits	3	1L	\$100,000	\$50,000	\$100,000	\$100,000
NB	Project Limits	4	1L	\$100,000	\$50,000	\$100,000	\$100,000
SB	Project Limits	3	1L	\$100,000	\$50,000	\$100,000	\$100,000
SB	Project Limits	4	1L	\$100,000	\$50,000	\$100,000	\$100,000

9. DB Contractor Waiver of Disputes or Claims. DB Contractor acknowledges and attests that all PCO Notices, DB Contractor-Requested Change Orders, potential Disputes or Claims known to DB Contractor as of execution of this Amendment are stated in Attachment A to this Amendment. DB Contractor further warrants that, to the best of its knowledge, no other known changes or potential claims exist and it expressly waives its right to assert any additional Claims or Disputes arising from circumstances known or reasonably foreseeable as of the Effective Date of this Amendment. This Amendment does not limit DB Contractor from changes in the Work realized subsequent to execution of this Amendment.

10. Effect of Amendment on DB Agreement. Except as such terms are specifically modified by this Amendment, all terms and conditions of the Contract Documents (as defined in the DB Agreement) shall continue in full force and effect.

11. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

12. Entire Agreement. This Amendment constitutes the entire and exclusive agreement between the Parties relating to the specific matters covered herein. All prior or contemporaneous oral or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

13. Texas Law. This Amendment shall be governed and construed in accordance with the laws of the State without regard to conflict of law principles.

14. Representation on Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

DB CONTRACTOR:

GREAT HILLS CONSTRUCTORS.

a joint venture between Archer Western Construction, LLC and Sundt Construction, Inc.

By: Archer Western Construction, LLC

By: _____

Name: Daniel P. Walsh

Title: President

By: Sundt Construction, Inc.

By: _____

Name: G. Michael Hoover

Title: President & Chief Executive Officer

MOBILITY AUTHORITY: CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____

Name: James Bass

Title: Executive Director

Attachment A
 DB Contractor Known PCO Notices, DB Contractor-Requested Change Orders,
 potential Disputes or Claims

Number	Description	Cost	Time	Owner Directed
2B	RM 620 Median Pond Work - Balancing Change Order	\$(112,675.06)	No	Yes
RCP-002**	Revised ITS Component Locations	\$1,720,210.27	48 Days	Yes
PCO-008	Toll Violation Signing	\$86,388.00	No	Yes
PCO-010	ADA Compliant Driveways	\$400,486.00	No	No
PCO-013	Differing Site Condition at Braker Lane (Beard Drilling)	\$35,000.00	No	No
PCO-015	Differing Site Condition at Duval Road (Beard Drilling)	\$30,000.00	No	No
PCO-016	Differing Site Condition at Oak Knoll (Beard Drilling)	\$25,000.00	No	No
PCO-017	COA Sidewalk Walls Redesign and Construction	\$108,394.34	No	Yes
COR-008	COA Line Stops at Pond Springs Pond	\$423,960.12	No	No
PCO-020	Expanded Toll Zone Pavement	\$50,000.00	No	Yes
PCO-022	GAATN Unidentified Utility	\$150,000.00	No	No
PCO-024	Differing Site Conditions at RW-37 (Keller)	\$230,000.00	No	No
RCP-003	Full Color (RGB) DMS Signs	\$350,000.00	No	Yes
		\$3,496,763.67		
**Pending Execution as CO #9				