



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #3 SUMMARY

Authorize negotiation and execution of a project development agreement with the Texas Department of Transportation for the Bergstrom Expressway 183 South project.

Strategic Plan Relevance: Regional Mobility

Department: Engineering

Associated Costs: None

Funding Source: None

Board Action Required: Yes

Description of Matter: The Mobility Authority staff and staff at the Texas Department of Transportation (“TxDOT”) have reached agreement in principle on the terms and conditions of a Project Development, Operation, and Maintenance Agreement for the Bergstrom Expressway 183 South project (the “183S PDA”). The 183S PDA establishes the terms, conditions, and respective obligations of the Mobility Authority and TxDOT concerning development, design, construction, operation, and maintenance of the Bergstrom Expressway.

The resolution for this agenda item authorizes the Executive Director to finalize negotiations with TxDOT and execute the proposed 183S PDA in the form or substantially the same form provided as backup material for this item.

Backup material: Proposed Project Development Agreement
Draft Resolution

Contact: Wesley M. Burford, P.E., Director of Engineering

Draft: 4/14/2015

**PROJECT DEVELOPMENT, OPERATION, AND
MAINTENANCE AGREEMENT
US 183 SOUTH
("BERGSTROM EXPRESSWAY PROJECT")**

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- Exhibit “A” Description and Map
- Exhibit “A-1” Delineation of ROW for Authority Facilities
- Exhibit “A-2” Delineation of ROW for TxDOT Facilities
- Exhibit “B” Certification Regarding Use of Contract Funds for Lobbying
- Exhibit “C” Debarment Certificate
- Exhibit “D” Lower Tier Participation Debarment Certificate

**BERGSTROM EXPRESSWAY PROJECT
PROJECT DEVELOPMENT, OPERATION, AND MAINTENANCE AGREEMENT**

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission, hereinafter identified as “TxDOT,” and the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**, a political subdivision of the State of Texas, hereinafter identified as the “Authority” (each a “Party” and jointly referred to as the “Parties”), is effective as the date the Toll Equity Grant and the SIB Loan (as defined herein) have been approved by the Texas Transportation Commission (the “Commission”) and the Parties have executed agreements for the Toll Equity Grant and SIB Loan.

WITNESSETH

WHEREAS, on September 3, 2002, Travis and Williamson Counties (the “Counties”) petitioned the Commission for authorization to form the Central Texas Regional Mobility Authority pursuant to provisions of the Texas Transportation Code; and

WHEREAS, in Minute Order No. 109052 adopted by the Commission on October 31, 2002, the Commission authorized the creation of the Authority; and

WHEREAS, the Authority now operates pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE §26.11 *et seq.* (the “RMA Rules”), as well as its own policies and procedures; and

WHEREAS, the Authority is charged with funding and developing transportation projects throughout the region to provide innovative transportation solutions, promote economic development, and improve the quality of life for residents of the region; and

WHEREAS, TxDOT and the Authority have been cooperatively developing the Bergstrom Expressway Project (the “Project”), an approximately eight (8) mile project to add three tolled lanes in each direction within the existing US 183 corridor between US 290 and SH 71 and two tolled direct connectors that will connect eastbound SH 71 to northbound Bergstrom Expressway and southbound Bergstrom Expressway to westbound SH 71, all as is more fully described and depicted on Exhibit “A”; and

WHEREAS, the only portion of the Project that will be tolled is the added capacity, and at a minimum the same amount of non-tolled capacity that exists within the corridor at the time construction begins will be maintained within the corridor; and

WHEREAS, the Project is located within the jurisdiction of the Authority; and

WHEREAS, the Project is subject to the “primacy” provisions set forth in Chapter 373 of the Code; and

WHEREAS, Chapter 373 of the Code grants the Authority the first option to develop, finance, construct, and operate the Project; and

WHEREAS, pursuant to Resolution No. 14-023 passed on March 26, 2014, the Board of Directors of the Authority (the “Board”) elected to exercise its option to develop, finance, construct, and operate the Project; and

WHEREAS, in Minute Order No. _____ dated _____, 2015, the Commission approved the connection of the Project with a segment of the state highway system, and authorized the Executive Director of TxDOT to enter into a project development agreement with the Authority; and

WHEREAS, pursuant to an Advance Funding Agreement dated February 6, 2014, between TxDOT and the Authority, as amended on _____, the Authority received \$_____ in funding for utility relocations and other costs related to the Project and the Project corridor; and

WHEREAS, on _____2015, the Authority submitted a request, pursuant to 43 TEX. ADMIN. CODE Sec. 27.50, et seq (the “Toll Equity Rules”), for financial assistance in the form of a grant in the amount of \$_____ million (the “Toll Equity Grant”) to fund the costs of constructing the Project, including but not limited to the costs of utility relocations not previously performed, construction of sound walls, installation of tolling equipment, and construction of direct connectors; and

WHEREAS, on _____2015, the Authority submitted a request, pursuant to 43 TEX. ADMIN. CODE Sec. 6.1, et seq (the “SIB Rules”), for a State Infrastructure Bank loan in the amount of \$_____ million (the “SIB Loan”) to fund the costs of constructing the Project, including but not limited to the costs of utility relocations not previously performed, construction of sound walls, installation of tolling equipment, and construction of direct connectors; and

WHEREAS, the Authority intends to develop the Project through a design/build contract (the “Design/Build Contract”) and to procure the services of a design/build contractor (the “Design/Build Contractor”) pursuant to Sec. 370.401, *et. seq.*, of the RMA Act; and

WHEREAS, this Agreement is necessary and desirable to clarify the relationships between TxDOT and the Authority in connection with the development, design, construction, operation and maintenance of the Project; and

WHEREAS, this Agreement shall not be effective until the Authority and TxDOT have executed agreements for the SIB Loan and the Toll Equity Grant following approval of each by the Commission.

A G R E E M E N T

NOW, THEREFORE, the Parties agree as follows:

1. **Support for the Project.** TxDOT acknowledges its support for the financing, design, acquisition, construction, operation and maintenance by the Authority of the Project as a transportation project pursuant to the RMA Act. Without limiting the provisions of this Agreement, TxDOT and the Commission will take all actions reasonably requested by the Authority which are consistent with this Agreement and in furtherance of the purposes of this Agreement and which are consistent with applicable law. Unless and until the Authority elects to abandon its efforts to develop, construct and operate the Project or such time periods within which the Authority must pursue the Project, as required by law, lapse, TxDOT shall not advance any alternative to or conflicting proposal for the development of the Project during the term of this Agreement. Further, in its consideration of any work that might affect the Project, TxDOT shall use best efforts to minimize or avoid any adverse impact on the Project or its operations.

Nothing contained in the previous paragraph or elsewhere in this Agreement in any manner constrains the ability of TxDOT or any other entity to construct, operate, permit, or support (a) any work or improvements on highway projects necessary for improved safety, maintenance or operational purposes, (b) any rail project, (c) any HOV lanes required by environmental regulatory agencies, or (d) any highway projects or portions of a highway project included in any of the following transportation plans and programs:

- (i) 2013 - 2016 Statewide Transportation Improvement Program (STIP);
- (ii) 2014 Unified Transportation Program (UTP);
- (iii) The Metropolitan Transportation Plan 2035 adopted by CAMPO; or
- (iv) any future transportation plan or program adopted by CAMPO or a successor agency.

2. **Acquisition, Transfer, and Use of Right-of-Way.** The Project will be developed in a manner that allows for the tolled mainlanes and tolled direct connectors at SH 71 (collectively the “Authority Facilities”) to be owned, operated and maintained by the Authority, and the non-tolled frontage roads, including the cross streets within the right-of-way (collectively the “TxDOT Facilities”), to be owned, operated and maintained by TxDOT. The Authority shall be responsible for acquiring the additional right-of-way necessary for the Project, and will do so in the name of the State of Texas or in the name of the Authority with provision for subsequent transfer to the State for that portion of the right-of-way to be used for the TxDOT Facilities.

It is the shared intent of TxDOT and the Authority that, after compliance with the applicable requirements of Section 373.101 of the Texas Transportation Code or (if Section 373.101 is repealed and there is no successor provision authorizing the same), Subchapter D of Chapter 228 of the Texas Transportation Code (“Subchapter D”) and 43 TEX. ADMIN. CODE §§27.11-27.16,

the Authority Facilities and associated right-of-way shall be removed from the state highway system and transferred to the Authority as more specifically set forth in the following paragraph and pursuant to an agreement for the lease, sale, or conveyance of the Project (the "Transfer Agreement"). The TxDOT Facilities will not be transferred and shall remain on the state highway system.

In accordance with Section 373.101 of the Texas Transportation Code or (if Section 373.101 is repealed and there is no successor provision authorizing the same), Subchapter D, and subject to approval by the Commission, all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind, whether now or hereafter acquired by purchase, condemnation, dedication or any other means by TxDOT (or otherwise held by TxDOT) for the purpose of constructing and operating the Authority Facilities (the "Property Interests") shall be removed from the state highway system and transferred by TxDOT to the Authority by order of the Commission. To further evidence that transfer, one or more deed(s) without warranty shall be prepared and recorded, utilizing the legal descriptions attached to the applicable Minute Order, which legal descriptions shall be prepared by the Authority at its cost and expense and include any corrections reasonably determined by TxDOT and mutually agreed to by the parties. All costs of recordation shall be the responsibility of the Authority. Except as otherwise provided in this Agreement, the property interests are transferred "as is," without warranty of title, and subject to all matters of record. The foregoing transfer of the property interests shall include all structures and improvements of any kind now or hereafter situated thereon, together with all stored materials, if any, and following the transfer the Authority shall have exclusive rights and control over the property, subject to any previously recorded easements or other legally valid reservations of rights.

At such time as is mutually agreed to by the parties, the Authority shall petition the Commission for approval of the transfer of the Property Interests. TxDOT agrees to promptly take such actions as are reasonably required to secure approval of the transfer as soon as possible following the filing of the petition.

Prior to such time that any right-of-way for the Project, or any portion thereof, is transferred to the Authority, the Authority shall have, and TxDOT hereby grants to the Authority, a license and right of entry and possession on, over, and under such area and right of way owned by, subsequently acquired, and otherwise under TxDOT's control and as necessary to enable the Authority to cause the Project to be constructed. Such license and rights of entry and possession shall remain in effect unless and until responsibility for construction of the Project reverts to TxDOT or is otherwise acquired and assumed by TxDOT with the consent of the Authority or pursuant to applicable law. Additionally, subject to the conditions in this Agreement, TxDOT grants to the Authority a license and right of entry and possession on, over, and under such area and right-of-way owned by, subsequently acquired, and otherwise under TxDOT's control and as necessary to enable the Authority to cause the Authority Facilities to be operated, maintained, policed, and regulated. Such license and rights of entry and possession relating to the aforementioned activities shall be deemed granted upon the Effective Date of this Agreement and shall remain in effect unless and until operation and maintenance of the Authority Facilities is otherwise acquired and assumed by TxDOT with the consent of the Authority or pursuant to applicable law. The right-of-way to which use is granted hereunder, subject to this Agreement, is generally the area upon which the Authority Facilities are, or will be, located, as depicted on

the map attached hereto as Exhibit "A-1". The license for the area upon which the TxDOT Facilities are located (as generally depicted on Exhibit "A-2") shall terminate upon "Final Acceptance" of the Project or shall terminate as to that area subject to "Incremental Acceptance" of a segment of the Project, provided that the Authority shall, subject to the conditions in this Agreement, retain a right of entry for purposes of installing and maintaining signage and illumination as provided in Section 3. For purposes of this Agreement, "Final Acceptance" means the mutual determination by the Authority and TxDOT that "Substantial Completion" (as defined in the Design/Build Contract) has been achieved and all other requirements for Final Acceptance as set forth in the Design/Build Contract have been fully satisfied (including the completion or other satisfaction of punch list items) and the Authority has issued a Certificate of Final Acceptance to the Design/Build Contractor, and "Incremental Acceptance" shall mean the mutual acceptance by the Authority and TxDOT of a designated segment of the Project that is completed to Final Acceptance requirements prior to the Final Acceptance of the entire Project.

3. Maintenance and Operation. Upon Final Acceptance of the Project or Incremental Acceptance of a segment of the Project, TxDOT shall assume all operations and maintenance obligations for the TxDOT Facilities which are the subject of Final or Incremental Acceptance. Upon the issuance of the first notice-to-proceed under the Design/Build Contract, the parties shall work cooperatively to determine appropriate signage and illumination to be located on right-of-way for TxDOT Facilities related to operation of the Authority Facilities. The Authority shall have the right to install and maintain such signage and illumination in such locations as it reasonably deems necessary to maximize the safe and efficient operation of its toll collection system and of the Authority Facilities, provided that said structures and their installation shall conform to all applicable safety codes and standards (including, if applicable, the Texas Manual on Uniform Traffic Control Devices, as amended or revised) and further provided that the signage and/or illumination, and the installation thereof, does not conflict with the operation of the TxDOT Facilities. The signage may be revised, relocated, or supplemented from time-to-time as the Authority deems necessary to assure safe operations or to enhance efficiency of the operations of the Authority Facilities or the aesthetics of the corridor, subject to conformance to all applicable safety codes and standards (including, if applicable, the Texas Manual on Uniform Traffic Control Devices, as amended or revised) and shall not conflict with the operation of any TxDOT Facilities. In the event of a conflict, the parties will work diligently to find an alternative location or other solution that will meet the Authority's objectives of safe and efficient operation of the Authority Facilities without interfering with operation of the TxDOT Facilities. The Authority Facilities shall be owned, operated, maintained, policed, and regulated by the Authority in compliance with all applicable laws, rules, regulations, policies, procedures, and standards, the provisions of this Agreement, and relevant provisions of any trust agreement(s) or similar documentation evidencing or securing the Financing, as hereinafter defined.

Subsequent to Final Acceptance, the Parties shall work together to coordinate maintenance activities (whether performed by a contractor or by TxDOT or the Authority) on the portions of the Project that each will operate so as to minimize disruptions to service and negative impacts to toll operations. The Parties mutually agree to notify and obtain approval from the other Party in advance of any lane closures or blockage of the other Party's facility. Activities on the non-toll lanes and ramps that limit access to the tolled lanes may have an impact on the operations and revenue generation of the facility, particularly during peak hours. TxDOT agrees that it will only

allow or perform closures and associated work to occur during off-peak hours, except in the event of an emergency which poses a threat to the safety of the traveling public.

4. **Utility Relocations.** There will be utility relocations required for the Project. Utility relocations shall be the responsibility of the Authority. The Authority shall ensure that all Utility relocations are performed in accordance with applicable State laws, regulations, rules, policies, and procedures. This includes without limitation 43 TEX. ADMIN. CODE §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities, and 43 TEX. ADMIN. CODE §21.31 et seq. relating to Utility Accommodation. TxDOT acknowledges that utility relocation activities may be undertaken on the Authority's behalf by a third-party contractor (including, without limitation, its Design/Build Contractor), in which case the Authority shall be responsible for ensuring that such contractor carries out all such relocation activities in a manner consistent with applicable laws and administrative regulations. The Authority shall pay, or cause to be paid, utility owners pursuant to Section 370.170 of the RMA Act. TxDOT will cooperate with the Authority in securing the performance of all necessary utility relocations.

5. **Construction Obligations of the Authority.** The Authority shall be responsible for construction of the Project. Notwithstanding the allocation of maintenance responsibilities described above, TxDOT shall, during construction activities, remain responsible for incident management, snow and ice control, and operation of the Traffic Management System (TMS) (changeable message signs, lane control signals, cameras, etc.) for the entire Project.

The Authority will not be responsible for the repair or rehabilitation of existing bridges beyond \$50,000 per bridge if the Design/Build Contractor construction activities identify deficiencies beyond those identified under Design/Build Contractor's scope. Unless a cost-sharing agreement is negotiated between the Parties, TxDOT shall be responsible for costs in excess of \$50,000 per bridge. If Design/Build Contractor uncovers out-of-scope items that need repair, including any hazardous materials requiring remediation on existing bridges, the \$50,000 shall cover fixed costs and will not include analytical costs. TxDOT and the Authority shall determine and mutually agree upon the bid unit prices in the in the Design/Build Contractor's assessment of the \$50,000 per bridge. All remediation activity of any type shall be coordinated between TxDOT, the Authority, and the Design/Build Contractor so as to minimize the impacts of such activity on the schedule for completion of the Project.

The Authority or the Design/Build Contractor for the Project shall be responsible for promptly and diligently addressing, through clean-up or other appropriate and lawful steps, based on a property use appropriate risk-based clean-up standard, any hazardous materials that exceed regulatory action levels for highway projects based on a risk-based cleanup standard and, consequently, requires special treatment or disposal ("Hazardous Materials") that are encountered within the Project right-of-way by the Authority or any contractors working on the Project. If soil excavated within the Project right-of-way in the course of the Authority's construction of the Project is identified as containing Hazardous Materials, the Authority or its contractors shall accept delivery of the identified soil and handle it properly. TxDOT shall retain generator status for any and all pre-existing Hazardous Materials discovered within the Project right-of-way. For purposes of this Agreement, the phrase "pre-existing Hazardous Materials" shall mean those Hazardous Materials located within the Project right-of-way (and contiguous areas extending beyond such right-of-way) that existed as of the effective date of the

Design/Build Contract, regardless of whether the existence of such Hazardous Materials was known prior to or at that time. Pre-existing Hazardous Materials shall not include any Hazardous Materials brought on to the Project right-of-way (and contiguous areas extending beyond such right-of-way) subsequent to the effective date of the Design/Build Contract, or that is located on any Additional Properties (as defined in the Design/Build Contract) that are D/B Contractor Designated ROW (as defined in the Design/Build Contract).

The Authority shall be responsible for the operation and regulation of the Authority Facilities in compliance with applicable law, regulations, policies, and procedures, and the relevant provisions of any trust agreement(s) or similar documentation evidencing or securing financing, if any. The Authority shall be responsible for operation and maintenance of all the tolling equipment and tolling infrastructure required for operation of the tolled lanes. The Authority may contract for the performance of any of its obligations in connection with the Project to any other third party, including without limitation a Design/Build Contractor or a toll systems integrator, provided that the Authority shall retain ultimate responsibility for the proper operation, and regulation of the tolled lanes.

6. **Control of Work.** The Authority shall be responsible for the final design and construction of the Project, including: (a) ensuring that all environmental permits, issues, and commitments are adhered to in the Project design; (b) addressing field changes for potential environmental impacts and obtaining any necessary environmental permits, issues, and commitments for such field changes; (c) ensuring that all construction plans are signed, sealed and dated by a professional engineer licensed in the State of Texas; and (d) carrying out required utility relocation and/or adjustments, if any, pursuant to Section 4. Except as hereinafter provided, the Authority shall have sole authority and responsibility for: (i) the final design of the Project and all features thereof; (ii) the selection of underwriters, investment bankers, financial advisors, legal counsel, consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, a design/build contractor, contractors, subcontractors, vendors, sureties, toll system integrator and other parties retained in connection with the financing, design, construction, or operation of the Project; (iii) the commencement, sequencing and timing of design and construction activities associated with the Project; (iv) the acceptance or rejection of work or other deliverables performed under a contract let by the Authority; (v) the negotiation, bidding, and letting of contracts; and (vi) managing the operation, and toll collection requirements for the Authority Facilities.

The Authority shall be responsible for adhering to all applicable Federal Highway Administration (“FHWA”) and TxDOT rules, regulations, policies, procedures, and standards for the design and construction of the Project, except as specifically stated in this Agreement. The Authority must obtain the approval of the Commission as required by Section 370.187 of the Texas Transportation Code before construction of the Project begins, in accordance with the requirements of 43 TEX. ADMIN. CODE §§11.58 and 26.31.

Plans and specifications developed by the Authority for the Project must be in compliance with either the latest version of the TxDOT design manuals, as defined in 43 TEX. ADMIN. CODE § 27.51, or, in the absence of applicable TxDOT standards in the design manuals, with the latest version of the American Association of State Highway and Transportation Officials

("AASHTO") standards, as described in 43 TEX. ADMIN. CODE § 27.56(b)(1). For purposes of this section, the latest version of the design manuals and AASHTO standards are those that apply on the date the request for detailed proposals for the design and construction of the Project is issued by the Authority, as updated by all non-discriminatory changes made subsequent to that date. If the date that the request for detailed proposals for the design and construction of the Project is issued by the Authority is on or before December 31, 2014, the 2010 Roadway Design Manual shall be the applicable design manual.

The Authority may request exceptions to the design standards pursuant to 43 TEX. ADMIN. CODE § 27.56(b)(2). The TxDOT Executive Director or designee and FHWA may provide written approval of an exception after determining that the particular criteria could not reasonably be met due to physical, environmental or other relevant factors, and that the proposed design is a prudent engineering solution. Requests for design exceptions involving the structural capacity or bridge width shall be sent in writing to the TxDOT Executive Director or designee for review and approval.

Construction plans and specifications for the Project shall conform to the latest version of TxDOT's Standard Specifications (as adopted by TxDOT in November, 2014) for Construction and Maintenance of Highways, Streets, and Bridges, provided that the TxDOT Executive Director or designee may approve use of alternative specifications if the alternative is determined to be sufficient to ensure the quality and durability of the finished product for its intended use and the safety of the traveling public.

The Authority, its Design/Build Contractor, and TxDOT will hold an initial "scoping session" before start of the design activity and a formal review at the end of the Preliminary and Final Design. Preliminary and Final Design is defined as described in 43 TEX. ADMIN. CODE § 27.56(c). During the Preliminary and Final Design phases, TxDOT personnel will participate and provide comments on the design work with FHWA oversight. The Authority and TxDOT personnel will attend progress meetings, working meetings, design workshops, and conduct over-the-shoulder reviews throughout the design process. It is the intent of the over-the-shoulder reviews to check for basic concept-level detail, design criteria, and fatal flaws. These reviews will not include detailed calculation or drawing reviews unless deemed necessary to verify fatal flaws. The Design/Build Contractor shall be fully responsible for all aspects of design quality control (DQC) and design quality assurance (DQA) procedures and shall ensure quality by complying with the approved Design Quality Management Plan (DQMP). All submittals (e.g. plans, specifications, calculations, reports, etc.) shall be subject to review and acceptance by the Authority, with review and concurrence by TxDOT.

When a Preliminary, Intermediate or Final Design package is received, and after each design package has been reviewed by the Authority for completeness, the Authority shall submit, or shall cause its Design/Build Contractor to submit, to the TxDOT Executive Director or designee the information identified in 43 TEX. ADMIN. CODE § 27.56(c)(2) or 43 TEX. ADMIN. CODE § 27.56(c)(4). The Authority and TxDOT shall conduct reviews of each design submittal concurrently. The Design/Build Contractor shall verify that all quality processes are in compliance with the DQMP by certifying that each design package has been prepared in accordance with the DQMP. The Authority shall formally transmit to the Executive Director or

designee a signed and dated certification from the Design/Build Contractor that the design package is complete and meets contract requirements. For a Final Design package, the Design/Build Contractor shall also certify that Authority and TxDOT comments from the Preliminary and Intermediate Design submittals have been addressed and/or incorporated into the Final Design package.

TxDOT will review and provide to the Authority comments on each design package for inclusion in one set of design review comments to be sent to the Design/Build Contractor. TxDOT shall complete its review and the TxDOT Executive Director or designee shall notify the Authority in writing of its concurrence of with the design within ten (10) business days of receipt of the Preliminary and Final Design packages, and within fifteen (15) business days of receipt the Intermediate Design submittal. If rejected, a resubmittal of the design package shall be required for TxDOT concurrence. Resubmittal of any Preliminary or Final Design package will afford TxDOT an additional review period of ten (10) business days after receipt thereof; and an additional fifteen (15) business days after receipt of the resubmittal of an Intermediate Design package. If no notification of concurrence with a package is received from TxDOT by the end of the applicable review period, TxDOT shall be deemed to have concurred with the package, provided that prior to the expiration of the applicable review period TxDOT may notify the Authority, in writing, that additional time is needed to review specific aspects of the package, in which case the deemed concurrence shall only be for those items not identified as being the subject of further review. For any items identified in the written notice as requiring further review TxDOT shall use its best efforts to expedite the further review and to minimize any resulting delays. After TxDOT's review is complete, the TxDOT Executive Director or designee shall submit the design package (or such portions thereof as have been concurred with or deemed to have been concurred with) for FHWA review and concurrence. The Authority will have two (2) business days to review TxDOT and FHWA comments and incorporate into a unified Review Comment Summary and Resolution (RCSR) form. If conflicts or need for clarifications are identified, the Authority and TxDOT will conduct a comment concurrence meeting. After concurrence the Authority will forward comments to the Design/Build Contractor within fifteen (15) business days of receipt of a complete submittal package.

For purposes of this Agreement, the phrase "business day(s)" shall exclude Saturdays, Sundays, and state and federal holidays.

The Design/Build Contractor will have an opportunity to correct or submit additional information to cure any defects or deviations identified by the Authority and TxDOT. Each comment provided by the Authority and TxDOT will be required to be addressed and a response formulated by the Design/Build Contractor.

The Design/Build Contractor shall provide advance notice to the Authority and TxDOT a minimum of ten (10) business days prior to submitting a Preliminary, Intermediate, or Final Design package. If the package is not received on the date indicated in the advance notice, the Authority and TxDOT shall retain the right to extend their review period by one (1) business day for every business day the package was submitted either earlier or later than the date indicated in the advance notice.

Before the start of the 30% design activity, the Authority shall cause its Design/Build Contractor to schedule design workshops to discuss specialized items (at a minimum for retaining walls, sound walls, bridges, and drainage) on the Project. The Authority or its Design/Build Contractor may request additional in-progress design workshops in advance of design submittals. TxDOT shall participate and provide the Design/Build Contractor and/or its designers Project-specific guidance to assist in the design development.

After 30% review but prior to commencement of construction of any portion of the Project, the Authority shall provide TxDOT with early release or release for construction designs, plans, and specifications prepared by its Design/Build Contractor. The Authority shall cause its Design/Build Contractor to make changes to said designs, plans, and specifications as necessary to comply with the design criteria prescribed in this Agreement. Upon approval by the Authority of the early release or release for construction designs, plans, and specifications, the Authority shall have the right to begin or cause its Design/Build Contractor to begin construction of the Project.

The Authority is responsible for establishing and maintaining a system of internal audits. TxDOT and the Authority shall use quality audit results as a tool to review and implement continuous improvement to the DQMP and design activities.

The Authority shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

To the extent that any revisions to the Design/Build Contract require TxDOT approval, the Authority shall submit, or shall cause its Design/Build Contractor to submit, the proposed revision to TxDOT. TxDOT shall promptly complete its review and the TxDOT Executive Director or designee shall notify the Authority of approval or disapproval of the contract revision within twenty (20) business days. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such twenty (20) day period. The Authority will have an opportunity to correct or submit additional information to cure any defects or deviations identified by TxDOT. TxDOT shall review and respond to any such re-submittal within five (5) business days.

Construction oversight and inspection, and materials testing and inspection shall be the responsibility of the Authority. The Authority shall use all reasonable efforts to achieve "Substantial Completion" (as defined in the Design/Build Contract) of the Project by December 31, 2021. As provided in Section 14 of this Agreement, the Authority shall cause its Design/Build Contractor to provide to TxDOT an electronic copy and hard set of final construction plans, signed, sealed and dated by a professional engineer, licensed in the State of Texas, certifying that the Project was constructed in accordance with the approved plans and specifications and approved contract revisions.

TxDOT may conduct any and all oversight activities it deems necessary to comply with FHWA oversight requirements or as otherwise expressly required by FHWA. TxDOT shall cooperate

with the Authority and its Design/Build Contractor in conducting such activities, and shall make good faith efforts to minimize or avoid any delay in the performance of development work by the Authority or its Design/Build Contractor. TxDOT personnel may attend partnering meetings, weekly construction status meetings, and monthly long-term strategy meetings. TxDOT personnel may visit the Project periodically and as reasonably necessary to comply with oversight requirements. Any such visits or oversight activities conducted by TxDOT shall be in accordance with the Authority's and the Design/Build Contractor's safety procedures and policies. FHWA may perform construction oversight and periodic construction inspections and review. The Authority shall make available and provide safe access to FHWA to all work areas.

7. **Responsibility for Design.** The Authority acknowledges and fully accepts its responsibility for the design and construction of the Project, and the Authority further acknowledges and fully accepts responsibility for the regulation, signage, and overall operation of the Authority Facilities and hereby contracts to accept said responsibility in any litigation. Neither TxDOT nor the Authority waives, relinquishes, limits or conditions its governmental immunity or any other right to avoid liability which it otherwise might have to third parties. Nothing in this Agreement shall be construed as creating any liability in favor of any third party or parties against either TxDOT or the Authority, nor shall it ever be construed as relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the Authority.

8. **Environmental Permits and Compliance.** An Environmental Decision is anticipated to be obtained for the Project on or before May 1, 2015. The Authority shall be responsible for compliance with applicable requirements of state and federal law regarding environmental permits, issues, and commitments (EPIC) during construction. This shall include, without limitation, full compliance with the approved Environmental Documents (which includes the Environmental Assessment and the Environmental Decision) and completion of any required Section 7 consultations and any required mitigation and additional permitting. In order to fully vest the Authority with the ability and obligation to comply with all EPIC, TxDOT, to the extent permitted by law, hereby commits to transfer and assign to the Authority, as soon as is reasonably practicable, all rights and delegate all obligations granted under the approved Environmental Documents for the Project. In the event that changes are made to the scope of the Project which require a re-evaluation of (or supplement to) the approved Environmental Documents, the cost of such work shall be borne by TxDOT if it requests the change in scope and by the Authority if it requests the change in scope. In the event that conditions which were not reasonably anticipated by either Party are encountered in the course of compliance with EPIC and/or which require a change to the Environmental Documents, the Parties agree to work in good faith to determine a mutually agreeable cost-sharing arrangement.

9. **Contracting Procedures.** Pursuant to Texas Transportation Code Section 370.401, et. seq., the Authority is developing the Project through the Design/Build Method (as defined in Texas Transportation Code Chapter 370, Subchapter K). TxDOT and FHWA representatives have had, and will continue to have, the opportunity to observe the design/build procurement process for purposes of confirming compliance with applicable laws and regulations and to participate in the review of competitive submittals. TxDOT shall in no way be liable for any claims, protests, or causes of action arising out of the design/build procurement process. The Authority shall not execute the Design/Build Contract or authorize work under the Design/Build

Contract until TxDOT and FHWA provide, in writing, the required concurrence or approval. The Authority shall ensure compliance by its selected Design/Build Contractor with the applicable provisions of this Agreement.

10. **HUB Policy; DBE Guidelines.** The Authority shall require its Design/Build Contractor to comply with the Authority's Business Opportunity Policy (the "Policy") as set forth in the Authority's Resolution No. 03-60, as may be amended. Additionally, the Authority shall require its Design/Build Contractor to comply with the applicable DBE guidelines and regulations established in 49 CFR Part 26, as may be amended. In the event of a conflict between the Authority's policy and requirements of federal law, the latter shall control. The Authority shall provide to TxDOT quarterly reports regarding compliance with this paragraph.

11. **Compliance With Applicable Laws.** It is the Authority's obligation to monitor its Design/Build Contractor to ensure the Design/Build Contractor prosecutes its scope of work in compliance with all state and federal laws, including without limitation: (a) labor compliance standards are met in accordance with the provisions of the "Davis-Bacon and Related Acts" established in 29 CFR Parts 1, 3 and 5, and (b) wages of the Design/Build Contractors' employees are not less than those contained in the wage determination established by the U.S. Department of Labor. Additionally, the Authority shall monitor its Design/Build Contractor to ensure compliance with (x) the anti-kickback regulations established in 29 CFR Part 3; (y) the provisions of Title VI of the Civil Rights Act of 1964 codified in 49 CFR Part 21 and 23 CFR Part 710.405(b); and (z) the equal employment opportunity standards established in 41 CFR Part 60, provided that the Authority shall not be liable for violations of the foregoing laws, orders and regulations by the Design/Build Contractor. The Authority shall cause its Design/Build Contractor to make available to the governmental agencies responsible for enforcement of the above-referenced laws, orders and regulations, all documentation and records necessary to review and audit the various requirements established under this Section 11. To the extent required by law, the Authority's construction contract(s) and/or design-build contract(s) shall include the provisions required by FHWA Form 1273, Required Contract Provisions, together with the applicable provisions of the Clean Air Act and Clean Water Act codified in 42 USC 1368, et seq., including but not limited to the certification of the National Pollution Discharge Elimination System permits established under Section 402 of the Clean Water Act. Compliance with these provisions shall be the responsibility of the Authority for all contracts let by the Authority subsequent to the Effective Date of this Agreement. In addition, the Authority shall, to the extent required by law, be responsible for compliance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. This Section 11 shall operate and be construed solely as acknowledging and obligating the Authority to comply with the referenced Federal laws *only* to the extent that, and *only* for so long as, such compliance is required; if due to a change in the law or for any other reason any of the foregoing requirements are found to be inapplicable to the Authority, this Agreement shall be deemed modified automatically to delete said requirement(s). The Authority may rely on the legal opinion of its legal counsel in connection with any action taken or arising under this Agreement, provided that said opinion shall not bind TxDOT or the FHWA.

The Parties shall comply with all applicable federal and state laws, statutes, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When requested, the Authority shall

furnish TxDOT with satisfactory proof of this compliance. The Authority shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

12. **Toll System Interoperability.** Prior to deploying any toll collection equipment or technology the Authority (or its contractor) shall certify to TxDOT that the technology complies with any statewide interoperability standards adopted by TxDOT and with the requirements of any interoperability agreements between TxDOT and the Authority.

13. **Maintenance of Records.** All Project records and documents of the Authority must be made available to authorized representatives of TxDOT and the FHWA during normal work hours. All Project records and documents must be maintained by the Authority for four (4) years after final payment of construction costs incurred in connection with the Project. Additionally, TxDOT, the FHWA, and their duly authorized representatives shall have access to all governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions, including records in the possession of the Authority's agents to the extent that they relate to expenditures for which reimbursement is requested. Notwithstanding the foregoing, the Authority shall comply with all Federal laws pertaining to the retention of records and the provision of access thereto. The Authority shall maintain its books and records in accordance with generally accepted accounting principles in the United States, subject to any exceptions required by existing bond indentures of the Authority, and shall provide TxDOT with a copy of any audit of those books and records.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or the Financial Assistance Agreement, or indirectly through a contract or subcontract under this Agreement. Acceptance of funds from the state acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

The Authority shall comply with the audit requirements and other requirements relating to project records in 43 Tex. Admin. Code §27.55(b), including having a full audit of its books and records performed annually in accordance with the standards of OMB Circular No. A-133. The Parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

14. **Reports and Plans.** The Authority shall deliver to TxDOT quarterly progress reports for the Project prepared by the Authority's general engineering consultant. Within six (6) months after Final Acceptance of the Project, the Authority will deliver to TxDOT the final record drawings and documents, pursuant to the terms and conditions of this Agreement.

15. **The Financing.** The Authority intends to secure financing for the Project through the SIB Loan, the Toll Equity Grant, and possibly other debt instrument(s). TxDOT shall have no obligation or liability with respect to such financing, provided, however, that if reasonably requested by the Authority, TxDOT shall promptly provide assurances and/or other forms of information necessary or desirable for obtaining the financing, provided that said assurances are, in TxDOT's reasonable judgment, consistent with the provisions of this Agreement and, if

applicable, consistent with accepted practice in the municipal finance industry. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be effective, and the Authority may not perform any work under this Agreement, until the SIB Loan and Toll Equity Grant have been approved by the Commission and the parties have executed agreements for each.

16. Termination of this Agreement. This Agreement may be terminated upon the occurrence of any of the following conditions:

- (a) By written mutual agreement and consent of the Parties hereto;
- (b) By either Party hereto, upon the failure of the other Party to fulfill the obligations as set forth in this Agreement, provided that the Parties must have first followed the procedures set forth in Section 17 below;
- (c) By TxDOT, upon the inability of the Authority to secure financing for the Project, including due to the Commission's failure to approve the Toll Equity Grant or SIB Loan or the Parties' inability to reach agreement on definitive terms of the agreement for the Toll Equity Grant or SIB Loan;
or
- (d) By satisfactory completion of all responsibilities and obligations described herein.

Notwithstanding the termination of this Agreement as provided for above, the rights and obligations granted under Section 2 shall survive termination of this Agreement and shall only terminate as provided for in Section 2.

17. Dispute Resolution. The Authority and TxDOT will set up a formalized process to resolve any issues that arise in connection with this Agreement. The process will include an issues resolution ladder to resolve questions at the appropriate organizational levels of each Party. Any issues that cannot be resolved by use of the issues resolution ladder will be referred to the Authority's Executive Director or designee and TxDOT's Executive Director or designee to resolve. If a dispute is processed under the issues resolution ladder and not resolved, the Parties agree to use the procedures in the following sentences. The Party making a claim may advance it in accordance with the statutes and administrative rules applicable on the Effective Date, including all statutory provisions that effect a waiver, in whole or part, of sovereign immunity to suit for the purpose of adjudicating a claim for a breach under this Agreement. The parties agree to use any alternative dispute resolution procedure that is a part of the applicable claim procedure. The Parties shall satisfy the requirement for alternative dispute resolution by participating in non-binding arbitration, unless otherwise agreed to by the Parties. During the resolution of an issue the Authority and TxDOT will not hinder work under the Agreement and such work will proceed.

18. Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the Parties and their legal successors, including without limitation any successor agency to TxDOT or the Authority. Other than as provided in the preceding sentence, neither TxDOT nor the Authority shall assign, sublet, or transfer its interest in this Agreement

without the prior written consent of the other Party to this Agreement, unless otherwise provided by law.

19. Officials Not to Benefit. No member or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom. No member, officer, or employee of the State of Texas, TxDOT, the Authority, or of a local public body during his/her tenure shall have interest in this Agreement or the benefits/proceeds thereof. Pursuant to the provisions of 31 USC 1352, the Authority shall complete the "Certification Regarding Use of Contract Funds for Lobbying", attached hereto as Exhibit "B" and made a part hereof for all purposes.

20. Debarment Requirements. The Authority shall require its Design/Build Contractor to complete the "Debarment Certification", attached hereto as Exhibit "C" and made a part hereof for all purposes. All subcontractors to the Authority's Design/Build Contractor must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Exhibit "D" and made a part hereof for all purposes.

21. Circulation of the Agreement. Copies of this Agreement will be provided to, reviewed and relied upon by underwriters, investment bankers, brokerage firms, bond counsel, and similar parties in connection with the provision of any additional Project financing.

22. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

23. Written Amendments. Any changes in the character, agreement, terms and/or responsibilities of the Parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the Authority and TxDOT.

24. Notices. All notices to either Party by the other required under this Agreement shall be delivered personally or sent by certified or registered U.S. Mail, postage prepaid, addressed to such Party at the following respective addresses:

Texas Department of Transportation
Austin District Office
7901 N. IH 35
Austin, Texas 78753
Attention: District Engineer

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

with copies to:

Texas Department of Transportation
Office of General Counsel
125 E. 11th Street
Austin, Texas 78701

Locke Lord LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Attention: C. Brian Cassidy

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

25. Gratuities. Any person who is doing business with or who may do business with TxDOT under this Agreement may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of TxDOT's Executive Director.

26. Conflict of Interest. The Authority shall not assign an employee to the Project if the employee:

- (a) owns an interest in or is an officer or employee of a business entity that has or may have a contract with TxDOT relating to the Project;
- (b) has a direct or indirect financial interest in the outcome of the Project;
- (c) has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with TxDOT; or
- (d) is a current part-time or full time employee of TxDOT.

27. Limitations. All covenants and obligations of TxDOT and the Authority under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of TxDOT or the Authority shall have any personal obligations or liability hereunder.

28. Sole Benefit. This Agreement is entered into for the sole benefit of TxDOT and the Authority and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either Party hereto shall be construed as giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

29. Relationship of the Parties. Nothing in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent between TxDOT and the Authority, nor do the Parties, by this Agreement, intend to create a joint enterprise, joint venture, or partnership.

30. Authorization. Each Party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. If and to the extent that any approval or action by the Governor of the State of Texas is required to effectuate or authorize any provision of this Agreement, TxDOT agrees that it will use all reasonable efforts to obtain said approval or action. Each signatory on behalf of TxDOT and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

31. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having or being deemed to have drafted, prepared, structured, or dictated such provision.

32. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of any agreement under which TxDOT is providing financial assistance to the Authority to fund certain costs of the Project (the “Financial Assistance Agreements”), but in the event of conflict the terms of the Financial Assistance Agreements shall control.

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by three (3) multiple counterparts on the dates shown herein below, effective on the date listed above.

**CENTRAL TEXAS
REGIONAL MOBILITY AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Mike Heiligenstein,
Executive Director

By: _____
LtGen J.F. Weber, USMC (Ret)
Executive Director

Date: _____

Date: _____

[Type text]

EXHIBIT "A"
Bergstrom Expressway Project

[Type text]

EXHIBIT "A-1"
Description of ROW for Authority Facilities

[Type text]

EXHIBIT "A-2"
Description of ROW for TxDOT Facilities

[Type text]

EXHIBIT "B"

Certification Regarding Use of Contract Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require the language of this certification to be included in all lower tier subcontracts which exceed \$100,000, and that all such recipients shall certify and disclose accordingly.

Signature of Certifying Official

Typed Name

Title

Date

[Type text]

EXHIBIT "C"

Debarment Certificate

- (1) The CONTRACTOR certifies to the best of its knowledge and belief, that its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public* transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public* transactions terminated for cause or default.
- (2) Where the CONTRACTOR is unable to certify to any of the statements in this certification, such CONTRACTOR shall attach an explanation to this certification.

*federal, state or local

Signature of Certifying Official

Title

Date

[Type text]

EXHIBIT "D"

Lower Tier Participant Debarment Certification

(Negotiated Contracts)

_____, being duly sworn

(insert name of certifying official)

or under penalty of perjury under the laws of the United States, certifies that

neither _____ nor its

(insert name of lower tier participant)

principals are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

Signature of certifying Official

Title

Date of Certification

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

RESOLUTION NO. 15-___

**AUTHORIZING NEGOTIATION AND EXECUTION OF A PROJECT
DEVELOPMENT AGREEMENT WITH THE TEXAS DEPARTMENT OF
TRANSPORTATION FOR THE BERGSTROM EXPRESSWAY 183 SOUTH PROJECT.**

WHEREAS, under the FY 2015-2018 Transportation Improvement Program adopted by the Capital Area Metropolitan Planning Organization, the Mobility Authority is proceeding with development of the Bergstrom Expressway 183 South Project (the "Project"), and must obtain additional funding for continued development, construction, and completion of the Project; and

WHEREAS, before beginning construction of the Project the financial assistance agreement obligates the Mobility Authority and the Texas Department of Transportation ("TxDOT") to enter into an agreement to establish terms and conditions for the development, design, construction, operation, and maintenance of the Project (the "PDA"),

WHEREAS, the Mobility Authority staff and consultants and staff for TxDOT have discussed and agreed to a proposed PDA, subject to revisions both parties agree are necessary or desirable, and a copy of that proposed PDA has been provided to the Board as agenda backup information for this resolution; and

WHEREAS, the Executive Director recommends approval of the proposed PDA in the form or substantially in the form provided to the Board as agenda backup information.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves the proposed PDA, and authorizes the Executive Director to finalize negotiations and execute the PDA in the form or substantially in the form provided to the Board as agenda backup information.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 22nd day of April, 2015.

Submitted and reviewed by:

Approved:

Andrew Martin, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors