

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

RESOLUTION NO. 16- 005

**AUTHORIZING THE EXECUTIVE DIRECTOR TO FINALIZE AND
EXECUTE AN AMENDMENT TO THE DESIGN-BUILD CONTRACT
WITH CH2MHILL FOR THE MOPAC IMPROVEMENT PROJECT**

WHEREAS, by Resolution No. 13-010 dated February 27, 2013, the Board of Directors of the Central Texas Mobility Authority ("Mobility Authority") authorized the Executive Director to finalize and execute a design-build contract (the "Contract") with CH2M Hill Engineers, Inc. ("CH2M") for development of the MoPac Improvement Project (the "Project"); and

WHEREAS, the Deputy Executive Director issued a Notice of Event of Default dated December 17, 2015, notifying CH2M of its failure to perform work on the Project in accordance with the Project Schedule; and

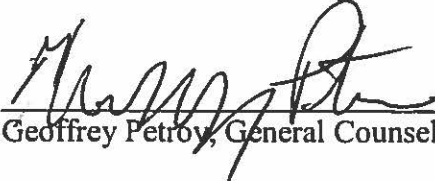
WHEREAS, the Deputy Executive Director and CH2M have discussed and agreed to terms for a proposed amendment to the Contract which provides a Recovery Schedule acceptable to the Mobility Authority and other modifications to the terms of the Contract; and

WHEREAS, the Board has considered the proposed terms of the Contract amendment and plan for completing the Project;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the Executive Director to take all actions necessary to negotiate, execute and implement a Contract amendment that is consistent with the term sheet attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 16th day of February, 2016.

Submitted and reviewed by:



Geoffrey Petroy, General Counsel

Approved:



Ray A. Wilkerson
Chairman, Board of Directors

EXHIBIT A

TERM SHEET FOR AN AMENDMENT TO THE DESIGN-BUILD CONTRACT BETWEEN CTRMA AND CH2M

The following terms are intended to provide a conceptual overview of the basis for further discussions regarding a potential amendment (the "D/B Contract Amendment") to the Design/Build Contract between CTRMA and CH2M dated as of April, 2013 (the "Design/Build Contract"). The D/B Contract Amendment, if executed, is intended to establish a framework for expeditious completion of the Mopac Improvement Project. Notwithstanding the foregoing, if a mutually agreeable document is executed, the effective date of the D/B Contract Amendment shall be February 9, 2016 (the "Effective Date"). Unless defined herein, capitalized terms have the meaning set forth in the Design/Build Contract.

Schedule:

CH2M has presented a recovery schedule (the "Recovery Schedule") which provides for opening of the northbound and southbound lanes, immediately north of 2222 to approximately Parmer Lane (the northern terminus) to tolled traffic for revenue generation (the "Interim Milestone Work"), by June 8, 2016 (the "Interim Milestone Deadline"), and Substantial Completion of the entire Project by November 29, 2016. The Recovery Schedule pertains only to a schedule for the Project Completion and does not alter the Project Completion Deadlines set forth the Design/Build Contract as amended for the purpose of imposing Liquidated Damages nor does it amount to an extension of time of the contractual Project Completion Deadlines for purposes of other obligations under the Design/Build Contract.

D/B Contract Amendment Terms:

In consideration of CTRMA accepting the Recovery Schedule for the limited purposes set forth herein, the parties will agree to a D/B Contract Amendment which will include the following terms:

1. **Schedule.** The Recovery Schedule, if agreed upon, must be supported by mutually agreed to identifiable metrics such as traffic shifts and other significant construction activities affecting the roadway, which allow for a detailed evaluation of progress on a monthly or more frequent basis (at the option of CTRMA) and which ensures Substantial Completion of the Project by November 29, 2016. Subject to TxDOT concurrence, CTRMA will, contemporaneous with execution of the D/B Contract Amendment, release its current work stoppage directive on the NB traffic switch at Segment 4 such that the traffic switch can occur no later than February 20, 2016. Deviations from the Recovery Schedule shall be monitored through detailed assessments of progress conducted every month. If in any month the earned value average of the early and late start dates of the planned projections of the Recovery Schedule (as indicated in the schedule) deviates from the Recovery Schedule by more than fifteen (15) percent, CTRMA may notify CH2M in writing and request a supplemental recovery schedule. If an acceptable supplemental recovery schedule has not been submitted and more

than a fifteen (15) percent deviation continues for a second consecutive month, such deviations shall result in an event of default.

2. **Claims.** CH2M will be allowed to pursue the following alleged claims through the DRB process: (i) Differing Site Conditions associated with the undercrossing drainage; (ii) Differing Site Conditions associated with the undercrossing (SB and NB); (iii) delays and other issues associated with the City of Austin 42 inch water line relocation; (iv) previously rejected maintenance of traffic proposal(s); (v) design interference; (vi) lack of labor availability; (vii) unusual rain events; (viii) appropriate depth of drill shafts for sound walls; and (ix) cumulative effects of changes, disputes, claims, and change orders. The parties will make best efforts to present their claims to the DRB prior to April 30, 2016. No additional claims by CH2M may be asserted through the DRB process except those resulting from disputes over the change orders listed on Attachment "A" or circumstances or occurrences for which CH2M, as of the Effective Date of the D/B Contract Amendment, had no knowledge of, and/or had no reason to have knowledge of, the existence of conditions or circumstances giving rise to such claims. CTRMA shall also assert no additional claims through the DRB process except those resulting from previously identified non-conforming work or circumstances or occurrences for which CTRMA, as of the Effective Date of the D/B Contract Amendment, had no knowledge of, and/or had no reason to have knowledge of, the existence of conditions or circumstances giving rise to such claims, provided that nothing herein shall preclude CTRMA from asserting claims based on latent defects or claims under the warranty provisions of the Design/Build Contract. Neither party waives its right to subsequently seek judicial remedies related to claims asserted before the DRB.

3. **Pending Time & Materials Change Orders.** All time and materials change orders pending as of the effective date of the D/B Contract Amendment will be resolved through negotiations between the parties conducted in accordance with the Design/Build Contract and converted to lump sum change orders. None of the allowed time impacts shall impact the Interim Milestone Deadline and/or Substantial Completion Deadlines identified in the Recovery Schedule. If CTRMA and CH2M cannot reach agreement on any change orders listed in Attachment "A", either party will be allowed to pursue any unresolved issues through the DRB process.

4. **Directive Change Orders and CH2M's Proposed Change Orders.** CH2M shall withdraw its objections to pending Directive Change Orders identified on Attachment "A". A designated employee of each of CTRMA and CH2M will negotiate the Directive Change Orders and the CH2M Proposed Change Orders identified on Attachment "A" in accordance with the Design/Build Contract. These will be lump sum change orders, and in no event shall a Directive Change Order or CH2M Proposed Change Order impact the Interim Milestone Deadline and/or Substantial Completion Deadlines identified in the Recovery Schedule. If CTRMA and CH2M cannot reach agreement on any change orders listed in Attachment "A", either party will be allowed to pursue any unresolved issues through the DRB process.

5. **Liquidated Damages.** Beginning on the Completion Deadline as set forth in the Design/Build Contract as amended and approved by TxDOT, or such other date as mutually agreed to following the negotiation of outstanding Change Orders, Liquidated Damages (“LDs”) will be accrued in the amount of \$73,500 per day (subject to the changes described below) until the Interim Milestone Work has been completed. Previously accrued LDs will be assessed on May 1, 2016 and all future LDs will be assessed as incurred. Once the Interim Milestone Work has been completed, the LDs will be reduced to \$43,433 per day until Substantial Completion is achieved or until the aggregate cap for LDs allowed under the Design/Build Contract has been assessed. The intent of this provision is to grant potential relief from a portion of the LDs based on achieving the Interim Milestone Work and/or Substantial Completion by specific deadlines. In the event a ruling of the DRB has the effect of extending the Completion and/or Final Acceptance Deadlines set forth in the Design/Build Contract, such extension will be given effect in determining the date of initiation of the accrual and assessment of LDs, unless CTRMA provides written notice of its intent to seek a judicial determination of the claim giving rise to such extension, in which case no extension will be granted until judicial resolution of the issue. If the judicial determination finds that the deadlines should be extended, CTRMA will give effect to that extension in determining whether a refund of any amounts previously assessed is due.

6. **Lane Rentals.** CTRMA will agree to not assess future lane, shoulder, loop or other rental charges and liquidated damages set forth in Section 22 of Exhibit B- Scope of Work if, and only if, CH2M seeks prior authorization to close or impede one or more lanes of traffic and such authorization is granted by CTRMA in writing, and if such authorization is granted, only for the duration specified in the written approval.

7. **Notice of Default.** Upon execution of the D/B Contract Amendment setting forth the terms described above, CTRMA will withdraw its notice of default dated December 17, 2015, provided that CTRMA shall have the full right, ability, and authority to notify CH2M of any future events of default under the Design/Build Contract (as amended) and to fully pursue all rights and remedies under the Design/Build Contract (as it, and any deadlines specified therein, may be amended or modified by Approved Change Orders or the D/B Contract Amendment). CH2M shall likewise fully reserve all rights and remedies under the Design/Build Contract.

8. **Concurrence by Others.** Any D/B Contract Amendment embodying the terms set forth above (and others agreed to by the parties) is subject to review and written concurrence by FHWA, TxDOT and the Co-Sureties identified in the Performance Bond tendered by CH2M as part of the Design/Build Contract. Failure of any of these parties to approve the D/B Contract Amendment will preclude the amendment from becoming effective.

ATTACHMENT "A"

PENDING CHANGE ORDERS

The numbers that appear on this Attachment are subject to confirmation by the parties

| Time and Materials Change Orders | RMA/HNTB Pricing | CH2M Pricing | Difference | Agreed Estimate | Days | Status |
|--|-------------------------|---------------------|-------------------|------------------------|-------------|------------------------------|
| Enfield Bicycle and Pedestrian Improvements (CO#13B) | \$920,000.00 | \$3,010,177.00 | \$2,090,177.00 | \$800,000.00 | 35 | Need Approval TxDOT/FHWA |
| 35th and 45th Ramp Widening (CO#14B) | \$250,000.00 | \$1,232,385.00 | \$982,385.00 | \$250,000.00 | 25 | Need Approval TxDOT/FHWA |
| 5th and Caesar Chavez SB Reconfiguration | \$279,000.00 | \$1,549,712.37 | \$1,270,712.37 | \$279,000.00 | 0 | FHWA Approving |
| Westminster Sound Barrier | \$1,007,587.00 | \$7,850,446.00 | \$6,842,859.00 | \$1,007,587.00 | TBD | 21d Extension Pending w/CH2M |
| CapMetro Pedestrian Crossing Segment #1 | \$367,217.00 | \$454,036.00 | \$86,819.00 | TBD | TBD | Directive Issued |
| Additional Shoulder Adjacent to Soundwall #1 | \$415,000.00 | No Pricing | \$141,299.72 | \$415,000.00 | TBD | |
| Westover Entrance Ramp Repairs | \$450,000.00 | No Pricing | \$448,386.00 | \$450,000.00 | TBD | |
| NB Loop Ramp Abutment Repair | \$275,000.00 | No Pricing | \$275,642.00 | \$275,000.00 | TBD | |
| 2222 Retaining Wall Repair | \$850,000.00 | \$1,250,000.00 | \$400,000.00 | \$850,000.00 | TBD | |

| Directive CO's | RMA/HNTB | CH2M Pricing | Difference | Agreed Estimate | Days | Status |
|------------------------------------|-----------------|---------------------|-------------------|------------------------|-------------|---------------|
| Cross Street Resurfacing | \$193,963.51 | \$587,989.68 | \$394,026.17 | TBD | TBD | |
| Shared Use Path @ US183 | | \$1,832,820.00 | | | | |
| Additional Hardscape and Landscape | \$791,508.00 | \$1,283,482.62 | \$491,974.62 | TBD | TBD | |

| CH2M PCO's | RMA/HNTB | CH2M Pricing | Difference | Agreed Estimate | Days | Status |
|--------------------------------|-----------------|---------------------|-------------------|------------------------|-------------|---------------|
| Electrical Lighting Wiring | N/A | No Pricing | N/A | TBD | TBD | |
| ITS Non Serviceable Duct Banks | N/A | No Pricing | N/A | TBD | TBD | |
| Unidentified Utilities | N/A | No Pricing | N/A | TBD | TBD | |