



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

March 28, 2018
AGENDA ITEM #6

Approve an Interlocal Agreement with Travis
County for projects at Elroy Road and
Ross Road

Strategic Plan Relevance: Regional Mobility
Department: Engineering
Contact: Justin Word, P.E., Director of Engineering
Associated Costs: \$33.5M
Funding Source: Travis County
Action Requested: Consider and act on draft resolution

Summary:

At the February 28, 2018 Board meeting, staff was authorized to negotiate an interlocal agreement with Travis County for development and delivering of two projects: Elroy Road (\$28.8M) and Ross Road (\$4.7M) to enhance safety on their system. This interlocal agreement would allow the Mobility Authority to manage the design, procurement and construction of the County projects in a similar fashion to Kellam Road. This Interlocal Agreement will be in a form substantially similar to that contained within Exhibit A of the Draft Resolution. The Draft Resolution seeks Board approval to execute the interlocal agreement with the County.

Backup Provided: Draft Resolution
Draft Interlocal Agreement

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

RESOLUTION NO. 18-0XX

**APPROVE AN INTERLOCAL AGREEMENT WITH TRAVIS COUNTY FOR
PROJECTS AT ELROY ROAD AND ROSS**

WHEREAS, the Central Texas Regional Mobility Authority (“Mobility Authority”) was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.01, *et. seq.* (the “RMA Rules”); and

WHEREAS, both the Mobility Authority and Travis County are authorized to design and construct roads needed to relieve existing and future traffic congestion and to improve the transportation network that serves Travis County residents and the traveling public; and

WHEREAS, under the Interlocal Cooperation Act, Chapter 791, Government Code, and Chapters 222 and 370, Transportation Code, the Mobility Authority and Travis County may enter into one or more agreements to cooperate in funding, designing, building, and maintaining improvements to the roadway system that serves the residents, landowners, businesses, and the traveling public in southeast Travis County; and

WHEREAS, Travis County has approached the Mobility Authority about the possibility of entering into an interlocal agreement to develop and deliver reconstruction projects to enhance safety and capacity on Elroy Road and Ross Road (the “Projects”); and

WHEREAS, by Resolution No. 18-004, dated February 28, 2018, the Board authorized and directed the Executive Director to negotiate an interlocal agreement with Travis County for the development and construction of the Projects; and

WHEREAS, the Executive Director and Travis County have negotiated an interlocal agreement whereby Travis County will provide funding for the Projects and the Mobility Authority, under the County’s oversight, will to manage the design, procurement and construction of the Projects; and

WHEREAS, the Executive Director recommends that the Board of Directors approve the interlocal agreement with Travis County for the development and construction of Elroy Road and Ross Road Projects in the form or substantially the same form as is attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that proposed interlocal agreement with Travis County for the development and construction of the Elroy Road and Ross Road Projects is hereby approved and the Executive Director is authorized and directed to execute the interlocal agreement in the form or substantially the same form as is attached hereto at Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 28th day of March 2018.

Submitted and reviewed by:

Approved:

Geoff Petrov, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors

Exhibit A

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (“Agreement”) is between Travis County, Texas (the “County”) and the Central Texas Regional Mobility Authority (the “Authority”). County and Authority may be referred to collectively in this Agreement as the “Parties,” and individually as a “Party.”

WHEREAS, the Parties intend to participate and collaborate under the direction and oversight of Travis County – Transportation and Natural Resources in the design and construction of the widening of Elroy Road from McAngus Road to Kellam Road (the “Elroy Road Widening Project”), as well as Ross Road from Pearce Lane to Heine Farm Road from a 2-lane roadway to a 4-lane divided roadway with bike lanes and sidewalks (the “Ross Road South Project”), as approved by motion of the Travis County Commissioners Court on April ____, 2018 (individually referred to herein as a “Project” and collectively as the “Projects”); and

WHEREAS, the Projects are generally described and depicted in the attached Exhibit 1; and

WHEREAS, the County has been tasked with completing the 2017 Bond Program within five (5) years, and in order to meet that deadline must evaluate alternative delivery methods. Contracting with the CTRMA helps manage these two safety projects as an alternative delivery method in order to complete the 2017 Bond on time; and

WHEREAS, the County has agreed to fund the direct and indirect costs of the Projects as well as direct and oversee the projects as detailed in this Agreement, and the Authority has agreed to manage the design, procurement, and construction of the Projects as detailed in this Agreement; and

WHEREAS, the County will assign a County Project Manager from Transportation and Natural Resources to oversee all operations and act as the County’s representative. The County Project Manager will direct and oversee the delivery of the Projects as outlined in this Agreement; and

WHEREAS, the Parties, as political subdivisions of the State of Texas, intend for this Agreement to conform in all respects with the provisions of the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;

NOW, THEREFORE, the Parties agree as follows:

1. Financial Obligations.

(A) County will provide funding for the Elroy Road Widening Project equal to the current project cost estimate of \$25,933,622 timed as described below. The Authority will deposit all funds into a separate trust account as directed by the County so as not to commingle them with other Authority projects (the “Elroy Road Trust Account”).

(B) County will provide funding for the Ross Road South Project equal to the current project cost estimate of \$3,799,500 timed as described below. The Authority will deposit all funds into a separate trust account as directed by the County so as not to commingle them with other Authority projects (the “Ross Road Trust Account”).

(C) County obtained reimbursement resolution funds in the amount of \$3,647,952 in January of 2018 for Elroy Road Widening Project preliminary funding and intends to sell certificates of obligation in May 2018 in an amount sufficient to provide all funding needed to pay the Elroy Road Widening Project costs identified by the Budget for County fiscal year 2018. Additional certificate of obligation funds will be sold in May of 2019 to fund the remaining costs for construction of the Elroy Road Widening Project and to start design and right-of-way costs for the Ross Road South Project. In May of 2020, the remaining certificate of obligation funds to construct the Ross Road South Project will be sold. The County may pay all or a portion of the Projects’ costs using funds available from other sources, including funds provided to the County by third parties other than the Authority.

(D) The Authority shall be entitled to funds up to a not to exceed amount of 2% of the actual total project cost (excluding purchase cost of right-of way and utility relocation costs) for each Project to cover the administration expense of each Project by the Authority’s staff. This 2% administration expense shall be included in the detailed budget for each Project and shall be disbursed to the Authority on a pro-rata basis as funds are drawn down from the respective Trust Accounts to pay project costs.

(E) Authority and County will jointly develop a detailed budget for each Project, including a cash flow projection and the County’s projected funding sources (the “Budget”). Each Budget will include the following costs to be paid by the Authority (from the appropriate Trust Account) to itself and to outside consultants, vendors, and the successful bidders on the construction contract for each of the Projects:

- (1) preliminary engineering;
- (2) capital costs (design and construction);
- (3) engineering oversight (including design reviews, construction management, materials testing, inspection);
- (4) legal, administrative, and other fees and expenses related to this Agreement, procurement, and Project development and oversight;
- (5) environmental approvals, if required;
- (6) utility coordination services;
- (7) Right-of-Way coordination services;
- (8) contingencies;
- (9) the 2% administration expense described in Section 1(D); and
- (10) all other costs reasonably projected as necessary to complete the Project, excluding any additional cost for a Party’s in-kind services provided through a Party’s employee.

(F) The Budgets will include a cash flow by yearly bond issuance for each County fiscal year. Payments will be made by fiscal year based on the Budgets.

(G) No later than ten (10) days after the County has approved each Budget, as evidenced by a written notice of Budget approval signed by the County Project Manager and delivered to the Authority, the County shall pay to the Authority an initial payment identified in the Budget for use by the Authority to pay Project costs incurred prior to and after the date of Budget approval. If the Parties have not agreed on a Budget by May 1, 2018, or if the County defaults in making any payment to the Authority required by the Budget, the Authority may terminate this Agreement in accordance with Section 5(A).

(H) After the Budget is approved, it may be revised by written agreement of the County's Project Manager and the Authority's Program Manager. If the total cost of any one Project is projected to exceed the estimate set forth in the Budget for that Project, the Parties may engage in value engineering or other cost cutting measures in an attempt to control costs on any project or may identify contingency funds available from another of the Projects that can be transferred to the Project with the shortfall. If the projected combined costs of the Projects exceed funding available from the County from its own funds or from sources other than the Authority, the County may elect to provide the funds required to pay the additional Project costs. If the County fails to provide the funds required to pay excess Project costs, either Party may terminate this Agreement in accordance with Section 5(A). If either Party terminates this agreement due to lack of funding, County shall be responsible for any demobilization or other costs associated with the termination.

(I) Authority shall have no obligation to execute a construction contract for any Project, or to issue a notice to proceed under a construction contract until County has paid all funds required by the Budget to fully fund the construction contract, related oversight and inspection costs, and the contingency fund established in the Budget for that Project.

(J) Authority may disburse funds from each Trust Account to pay its administration expense, its outside contractors and to pay the contract price for construction of the corresponding Project to the bidder selected for the contract, including any change orders approved under this Agreement. Any disbursement of funds must first be approved by the County Project Manager before the funds can be disbursed. The Authority will provide a summary of the proposed disbursement with appropriate back-up. The County will review the proposed disbursement within five (5) days of receipt and either approve the disbursement or provide comment otherwise. If County does not provide its approval or comments by the deadline, the County is deemed to have approved the disbursement. No later than two days after making any disbursement from the Trust Account, Authority will provide to County a copy of the disbursement.

(K) Any interest earned on the funds in a Trust Account that is not used for Project expenditures should be reported to the County and remitted back to the County following final project closeout.

(L) Any funds remaining in a Trust Account shall be disbursed to County after the corresponding Project is accepted by the County as evidenced by a certificate of acceptance provided to the Authority, and after the Authority has disbursed and paid all Project expenses described in this section that were accrued and payable on the date of the County's acceptance.

(M) Authority shall keep and maintain records to document and support that each disbursement made by Authority is for an authorized purpose under this Agreement. All of Authority's disbursements paid from a Trust Account shall be subject to audit by County at County's request and sole expense.

(N) The Authority shall obtain written approval from the County before approving any proposed discretionary change order that would increase the cost of a Project as established in the corresponding Budget or that would delay the date required for substantial completion established by the construction contract for the Project. The Authority will notify and consult with the County on any proposed change order, but the Authority is hereby authorized to approve a proposed change order necessary with the concurrence of the County Project Manager to complete the Project as designed and scheduled; provided, however, that sufficient funds established by the Budget are available in the Trust Account to pay all costs resulting from the change order. If there are not adequate funds in the Trust Account for the change order, Authority will notify County of the need for the additional funds.

(O) The County may contract with a third party Program Manager ("Third Party Program Manager") who will support the County in tracking and scheduling County projects. The Authority agrees to coordinate with this Third Party Program Manager by providing requested schedule updates.

2. Project Development.

(A) County will timely acquire and make available to the Authority all right-of-way, licenses, easements of any nature and duration, and rights of possession needed to complete each Project. County will obtain any additional rights or right-of-way needed for design changes or betterments to each Project requested and funded by the County. A portion or all right-of-way acquisition tasks can be delegated to the Authority if both parties agree and the Budget is modified to reflect the new scope.

(B) The Authority shall provide ROW documents to the County on or before the date the 60% comments have been cleared. The Authority shall prepare right-of-way maps ("strip maps"), property descriptions ("field notes" and "parcel plats"), and other data as needed to describe the right-of-way and access rights necessary for the Projects. The Authority shall be responsible for all real property record and land title research useful or necessary in preliminary and final determination of parcel acquisition needs and preparation of ROW documents. For purposes of this Agreement, ROW documents are further defined as comprehensive legal descriptions for all parcels wherein acquisition of real property interests, whether permanent or temporary, are required for construction of the Projects. Legal descriptions shall be comprised of finalized parcel plats with metes and bounds descriptions, signed and sealed by a Registered Professional Land Surveyor currently licensed by the "Texas Board of Professional Land Surveying." All parcel plats and sketches shall depict the land area of the parcel, in addition to all improvements and significant natural vegetation located within or proximate to that land area. Copies of this data shall be delivered to the County for review at least three weeks before beginning the standard process for acquisition of right-of-way for each of the Projects. All surveying for ROW documents shall be tied to the Texas State Plane Coordinate System and must be located relative to all adjoining projects. Following the County's acceptance of ROW documents, the Authority

shall provide right-of-way line and on-site parcel staking whenever requested by the County, or its agents and assigns, for use in appraisal, land-planning, and activities associated with property owner negotiations.

(C) Utility relocations required for the Projects will be a joint responsibility. The Authority will perform the utility investigations, identify utility conflicts and coordinate relocations or protection in place plans with the utilities. The County will enter into any utility agreements required for the projects and will be responsible for making payments, if any, as required per the applicable utility agreements. The County agrees to provide such permits and easements as may be necessary for the Authority to accomplish the relocation of utilities. The County will cooperate with the Authority in securing the performance of all necessary utility relocations. The County will coordinate with the Authority regarding the placement or relocation of any utility within or on the projects to minimize and mitigate any disruption to the construction of the projects.

(D) The design, plans, and specifications for each Project shall comply with applicable local, state and federal regulations and standards and shall be sealed by a Texas Registered Professional Engineer.

(E) The Authority will manage the design and construction of each Project pursuant to applicable and agreed criteria, including (i) development of the engineering design, plans and specifications for all roadway improvements, (ii) the surveying, (iii) the construction, and (iv) inspection and testing.

(F) When design work for each design package is 30% complete, 60% complete, and again when the design work for each design package is 90% complete, Authority shall submit the complete design package to the County Project Manager. County Project Manager will review and provide comments on the design package to the Authority. The Parties will participate in joint monthly coordination and review meetings with representatives from all affected County reviewers to avoid or resolve conflicts in review comments. County agrees to complete its review and notify the Authority of its approval or disapproval of the design package no later than 5 days after receiving the design package. If County does not provide its approval or disapproval by the deadline, the County is deemed to have approved the design package. If County disapproves the information submitted, it shall at the same time notify Authority of the reasons for its disapproval and actions necessary for the design package to meet County approval. Authority will have an opportunity to correct or submit additional information to cure any defects or deviations identified by County. Any defects or deviations will be discussed in an over the shoulder review meeting and incorporated into the next submittal.

(G) The Authority in cooperation with the County shall be responsible for permitting, obtaining an approved Conditional Letter of Map Revision (CLOMR) [unless waived] and Letter of Map Revision (LOMR), environmental assessments and clearances associated with each Project. Authority agrees to develop and construct each Project on an expedited timetable in accordance with the corresponding Budget using resources and procurement methods available to and as determined by the Authority

(H) The Authority will ensure that the design engineer for each project provides professional liability, automobile liability, and general liability insurance in accordance with the standard requirements of the County. The Authority will ensure the Authority and the County are named as additional insureds with respect to such general liability and automobile liability coverage.

(I) The Authority and County will collaborate to implement Workforce solution goals in the construction contract. The Workforce solutions initiative leverages local construction projects to provide potential job opportunities to local veterans, homeless, near-homeless, ex-offenders, and the under-trained and under-certified. This initiative connects candidates to potential employers by providing job placement and training. The Authority will require all contractors and subcontractors comply with the County's livable wage rates, to the extent allowed by law.

(J) The Authority will make a good faith effort to encourage HUB participation at the same overall level as required for all County projects. The Authority will provide quarterly reports identifying overall HUB percentages utilized within the program.

3. Project Bidding & Award of Construction Contract.

(A) The Authority will be responsible for the solicitation of bids for the construction of the Project based on the approved plans and specifications and in accordance with the Authority's bidding policies, laws, practices, and procedures. The Authority will notify the County of the lowest responsible bidder and the amount of the bid for each Project. The County Project Manager will have 5 days to review the Authority's recommendation for award and must give written approval before the Authority can award the contract.

(B) County and Authority will consult on necessary or desirable provisions to be included in any construction contract for a Project procured by the Authority. Any construction contract executed by the Authority shall include, without limitation, indemnification protection provisions for Authority and County, a deadline for substantial completion of the Project; possible inclusion of incentive/ disincentive clauses in relation to meeting an agreed to schedule, if the delay is not attributable to the Authority, the County, or a force majeure event; and provisions establishing right of the Authority to assign the construction contract to County upon the County's acceptance of the substantial completion of the Project, together with all contractor's warranties, guarantees, and bonds.

4. Project Management.

(A) The Authority will act on behalf of the County with respect to each Project. The Authority agrees to coordinate with the County to interpret and define the County's policies and decisions with respect to each Project. If a dispute arises, the County's decision will be final. The Authority will designate a Program Manager and may designate other representatives to transmit instructions and act on behalf of the Authority with respect to each Project. The Authority will deliver monthly reports to County regarding financial, design and construction progress. The Authority, on request, will appear before the Commissioners Court for briefings.

(B) The County Project Manager will act on behalf of the County with respect to each Project, coordinate with the Authority, receive and transmit information and instructions, and will have complete authority to interpret, define, and communicate the County's policies and decisions with respect to each Project. The County Project Manager may designate other representatives to transmit instructions and act on behalf of the County with respect to the Project.

5. Default; Remedies; Termination.

(A) Either Party may terminate this Agreement if the other Party defaults in its obligation and, after receiving notice of the default and of the non-defaulting Party's intent to terminate, fails to cure the default no later than five days after receipt of that notice. This Agreement will terminate on the date when all Trust Account funds have been disbursed in accordance with the terms of this Agreement.

(B) If a disagreement between Authority and County arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, change orders, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the Authority's Program Manager and the County Project Manager, it shall be referred as soon as possible to the Authority's Executive Director (or his designee) and TNR's Deputy Director (or his designee).

6. Liability. To the extent allowed by Texas law, County and Authority agree that each Party is responsible for its own proportionate share of any liability for personal injury or death or property damage arising out of or connected to its negligent acts or omissions in connection with this Agreement as determined by a court of competent jurisdiction. Neither County nor Authority waives, relinquishes, limits or conditions its governmental immunity or any other right to avoid liability which it otherwise might have to a third party. Nothing in this Agreement shall be construed as creating any liability in favor of any third party or parties against either County or Authority, nor shall it ever be construed as relieving any third party or parties from any liabilities of such third party or parties to County or the Authority.

7. Mediation. When mediation is acceptable to both parties, the parties may use a mutually acceptable mediator, or a mediator appointed by a court of competent jurisdiction. Mediation is conducted in compliance with Chapter 154 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the mediated resolution, the mediation is not a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential in compliance with section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree in writing to waive confidentiality.

8. Miscellaneous.

(A) Force Majeure. Whenever a period of time is prescribed by this Agreement for action to be taken by either Party, the Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or

restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(B) Notice. All notices, demands or other requests, and other communications required or permitted under this Agreement or which any Party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the Party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving Party, or (ii) two days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such Party at the respective addresses set forth below, or such other address as each Party may from time to time designate by written notice to the others as herein required or (iii) electronic mail transmission (the latter of scanned documents in formats such as .pdf or .tif) for which confirmation of receipt by the other Party has been obtained by the sending Party:

AUTHORITY: Justin Word, Director of Engineering
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, TX 78705
Email address: jword@ctrma.org

WITH COPY TO: Geoff Petrov, General Counsel
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, TX 78705
Email address: gpetrov@ctrma.org

COUNTY: Morgan Cotten, Assistant Director
Travis County Transportation and Natural Resources
P.O. Box 1740 Austin, TX 78767
Email address: morgan.cotten@traviscountytexas.gov

WITH A COPY TO: John Hille, Director, Transactions Division
Travis County Attorney's Office
P.O. Box 1748
Austin, TX 78767
Email address: john.hille@traviscountytexas.gov

(C) Calculation of Days. Each reference in this Agreement to a day or days refers to a day that is not a Saturday, Sunday, or a legal holiday observed by both the County and the Authority. If the last day of any period described in this Agreement is a Saturday, Sunday, or such legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or such legal holiday.

(D) Entire Agreement. This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the Parties respecting the Project. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties hereto. The recitals set forth above and the attached exhibits are incorporated herein.

(E) Effective Date. This Agreement takes effect upon the last date of due execution of the Agreement by the County and the Authority.

(F) Other Instruments. The Parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(G) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

[Signatures]

Exhibit 1

Elroy Road Widening and Ross Road (South) Widening

