



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

December 15, 2021 AGENDA ITEM #8

Discuss and consider approving Amendment No. 3 to the Interlocal Agreement with the City of Austin for the return of unexpended betterment funds related to the 183 South Project

Strategic Plan Relevance:	Regional Mobility
Department:	Engineering
Contact:	Mike Sexton, P.E., Acting Director of Engineering
Associated Costs:	\$1,387,330.69
Funding Source:	Project Funds
Action Requested:	Approve Execution of ILA Amendment #3 between the Mobility Authority and City of Austin

Project Description/Background: The 183 South Project is approximately 8-miles along the existing US 183 corridor between US 290 and SH 71. Within the Project limits, the existing US 183 facility's classification was a four-lane major arterial (six lanes in some locations) with several at-grade signalized intersections and numerous side street junctions.

The Mobility Authority expanded this facility to include a toll freeway with six lanes (three lanes in each direction) and constructed non-toll, general-purpose roads consisting of four to six lanes (two to three lanes in each direction). Tolling limits of the freeway of the Project extend from south of Manor/Springdale Road to south of Thompson Lane. The Project has also constructed toll flyovers connecting eastbound SH 71 to northbound US 183 and southbound US 183 to westbound SH 71. Through traffic can use the Project's toll lanes or flyovers, with grade-separated structures, to bypass all cross-street intersections. The non-toll, general-purpose roads allow local traffic to access adjacent properties and includes traffic signals at major cross streets. The Project also improved access for cyclists with new 5-foot bike lanes adjacent to the general-purpose roads while building both a 10-foot wide shared use path and a 6-foot wide sidewalk for recreational users.

Previous Actions & Brief History of the Program/Project:

On July 29, 2015, the Mobility Authority and Colorado River Constructors (“CRC”) entered into a Design/Build Contract to design and construct the 183 South Project. CRC’s scope under this Design/Build Contract requires CRC to adjust the utilities in conflict with the 183 South Project. Included in these utilities are the City of Austin’s water and wastewater facilities.

Subsequently, the Mobility Authority and the City of Austin executed an Interlocal Agreement for the Adjustments of City of Austin Water and Wastewater System Utilities in Connection with the Bergstrom Expressway (183 South) Project (the “ILA”) and two ILA Amendments that defined the responsibilities, scope and funding of the betterments to be constructed by CRC:

- **ILA Execution – May 24, 2016**
 - The ILA delineated the responsibilities of the parties relative to the adjustment of the City’s water and wastewater facilities in conflict with the Project, including several betterments.
 - The City funded the betterments, depositing \$6,717,548.97 into an escrow account payable to the Mobility Authority as the betterments were performed.
- **ILA Amendment #1 Execution – September 6, 2017**
 - Mobility Authority Board of Directors approved the execution of Amendment #1 to the ILA (Resolution No. 17-049)
 - The City paid an additional \$1,009,999.64 to the Mobility Authority to install a 72” wastewater line.
- **ILA Amendment #2 Execution – September 11, 2019**
 - Mobility Authority Board of Directors approved the execution of Amendment #2 to the ILA (Resolution No. 19-044)
 - The City paid an additional \$206,167.22 to the Mobility Authority to install several additional City water and wastewater betterments.

Subsequently, the Mobility Authority and the City of Austin agreed to delete \$1,387,330.69 of work. Amendment #3 to the ILA proposes to reimburse the City the \$1,387,330.69.

Financing: This will be funded by 183 South Project funds that were initially received from the City.

Action requested/Staff Recommendation: Staff recommends approval of execution of Amendment #3, and the associated reimbursement of \$1,387,330.69 to the City.

Backup provided:

Draft resolution
Draft ILA Amendment #3
ILA
ILA Amendment #1
ILA Amendment #2

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

RESOLUTION NO. 21-0XX

**APPROVING AMENDMENT NO. 3 TO THE INTERLOCAL AGREEMENT
WITH THE CITY OF AUSTIN FOR UTILITY BETTERMENTS ON THE
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT**

WHEREAS, by Resolution No. 15-049, dated July 29, 2015, the Board authorized the Executive Director to execute a design-build contract with Colorado River Constructors for design and construction of the Bergstrom (183 South) Expressway Project (“Project”); and

WHEREAS, under the terms of the design-build contract, Colorado River Constructors is bound to adjust and relocate utilities that are within the jurisdiction of the City of Austin (“City”), including certain betterments requested by the City; and

WHEREAS, by Resolution No. 16-018, dated March 30, 2016, the Board authorized the Executive Director to execute an interlocal agreement with the City, identifying roles and responsibilities of the parties involved, including payment obligations for utility betterments requested by the City in which the City deposited \$6,717,548.97 into an escrow account payable to the Mobility Authority as the betterments were performed (the “Interlocal Agreement”); and

WHEREAS, by Resolution No. 17-049, dated September 6, 2017, the Board approved Amendment No. 1 to the Interlocal Agreement to incorporate an additional \$1,009,999.64 in funding from the City for requested wastewater betterments at Little Walnut Creek; and

WHEREAS, by Resolution No. 19-044, dated September 11, 2019, the Board approved Amendment No. 2 to the Interlocal Agreement to incorporate an additional \$206,167.22 in funding from the City for additional utility betterments not included in the Interlocal Agreement or Amendment No. 1; and

WHEREAS, the Mobility Authority and the City have agreed not to proceed with \$1,387,330.69 worth of previously funded betterments on the Bergstrom (183 South) Expressway Project that were previously requested by the City; and

WHEREAS, the Executive Director and the City have negotiated Amendment No. 3 to the Interlocal Agreement to reimburse the City unexpended funds in the amount of \$1,387,330.69; and

WHEREAS, the Executive Director recommends approval of proposed Amendment No. 3 to the Interlocal Agreement with the City in in the form or substantially the same form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board hereby approves Amendment No. 3 to the Interlocal Agreement to reimburse unexpended funds in the amount of \$1,387,330.69 that were previously allocated for utility betterments on the to the Bergstrom (183 South) Expressway Project requested by the City of Austin; and

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to finalize and execute Amendment No. 3 to the Interlocal Agreement in the form or substantially the same form as is attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 15th day of December 2021.

Submitted and reviewed by:

Approved:

James M. Bass
Executive Director

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

Exhibit A

THIRD AMENDMENT TO INTERLOCAL AGREEMENT FOR THE ADJUSTMENTS OF CITY OF AUSTIN WATER AND WASTEWATER SYSTEM UTILITY IN CONNECTION WITH THE BERGSTROM EXPRESSWAY (183) PROJECT

THIS THIRD AMENDMENT TO INTERLOCAL AGREEMENT (the “Third Amendment”) is made and entered into by and between the City of Austin, a Texas home-rule city (the “City”) and the Central Texas Regional Mobility Authority (the “Mobility Authority” and together with the City the “Parties”)

I.
RECITALS:

1. WHEREAS, on December 17, 2015, the City Council for the City of Austin (the “Council”) authorized the negotiation and execution of an interlocal agreement with the Mobility Authority for the relocation and improvement of water and wastewater utilities related to the Mobility Authority’s Bergstrom Expressway (183 South) project (the “Relocation and Improvements”) for the amount of \$6,717,549 plus a contingency amount of \$1,010,608, for a total agreement amount not to exceed \$7,728,157.

2. WHEREAS, on July 1, 2016, the Parties executed an interlocal agreement (the “Interlocal Agreement”) that set forth agreed terms for the design and construction of the Relocation and Improvements.

3. WHEREAS, on September 7, 2017, the Parties executed a first amendment to the Interlocal Agreement (the “First Amendment”) related to additional betterments requested by the City to include an additional lump sum payment to the Mobility Authority of \$1,009,999.64, an amount authorized by the Council’s November 19, 2015, action authorizing the negotiation and execution the Interlocal Agreement.

4. WHEREAS, on December 18, 2019, the Parties executed a second amendment to the Interlocal Agreement (“Second Amendment”) related to additional betterments requested by the City to include an additional lump sum payment to the Mobility Authority of \$206,168.

5. WHEREAS, the City is requesting an adjustment to the Interlocal Agreement for work not performed by the Mobility Authority.

6. WHEREAS, the City and Mobility Authority now desire to enter into this Third Amendment related to an adjustment of betterments originally requested by the City to include a reimbursement to the City from the Mobility Authority of \$1,387,330.69

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and covenants set forth below, the Parties hereby amend the Interlocal Agreement as follows:

II.
AMENDMENTS

1. From and after the Effective Date of this Third Amendment, all references in the 183 South project to the “Interlocal Agreement” shall mean and refer to the Interlocal Agreement for the Adjustments of City of Austin Water and Wastewater System Utilities in Connection with the

Bergstrom Expressway (183 South) Project as amended by the First Amendment, Second Amendment and this Third Amendment.

2. Exhibit "A1" to the Second Amendment to the Interlocal Agreement entitled Amended Funding and Contributions is hereby amended by the new Exhibit "A2" entitled "Amended Funding and Contributions" in the form attached to this Third Amendment. This form has been amended to include a list of Betterment Reimbursements. From and after the Effective Date of this Third Amendment, all references in the Interlocal Agreement to Exhibit A1 shall mean and refer to Exhibit A1 as amended by Exhibit A2.

3. Payment for the Betterment Reimbursements listed in Exhibit "A2" shall be remitted to:

Austin Water
AR, Financial Planning
625 E. 10th Street, Suite 500
Austin, TX, 78701

III. GENERAL CONDITIONS

1. The terms and conditions of the Interlocal Agreement are incorporated by reference for all purposes. Except as specifically amended and modified by the First Amendment, the Second Amendment, and this Third Amendment, the parties hereby agree that the terms and conditions of the Interlocal Agreement remain in full force and effect as written.

2. This Third Amendment may be executed in duplicate originals, each of equal dignity.

3. This Third Amendment becomes effective from and after the date when it is signed by the last party whose signing makes this Third Amendment fully executed (the "Effective Date").

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IN WITNESS WHEREOF, the authorized representatives of the City and the Mobility Authority, have executed this Third Amendment, as of the date(s) indicated below.

Approved as to form:

CITY OF AUSTIN:

By: Sean Creegan

By: Gina Fiandaca

Name: Sean Creegan

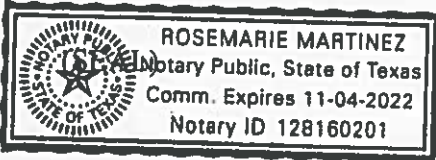
Name: Gina Fiandaca

Title: Assistant City Attorney

Title: Assistant City Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this 1 day of December, 2021, by Gina Fiandaca, Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



[Signature]
Notary Public, State of Texas

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____

Name: James Bass

Title: Executive Director

THE STATE OF _____ §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2021, by James Bass, Executive Director on behalf of Central Texas Regional Mobility Authority.

(SEAL)

Notary Public, State of Texas

Interlocal Agreement with the City of Austin

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

RESOLUTION NO. 16-018

**INTERLOCAL AGREEMENT FOR THE ADJUSTMENTS OF CITY OF AUSTIN
WATER AND WASTEWATER SYSTEM UTILITIES IN CONNECTION WITH THE
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT**

WHEREAS, Transportation Code, Chapter 370.161, authorizes Mobility Authority to acquire, construct, operate, maintain, or expand a transportation project in Travis County; and

WHEREAS, Subchapter E of Transportation Code Chapter 370 allows Mobility Authority to use the design-build method for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration or repair of a transportation project; and

WHEREAS, Transportation Code, Chapter 370.170 grants to Mobility Authority the power to install, construct, relocate and remove public utilities in, on or under a transportation project and to pay the cost of the relocation, removal, or grade separation of a public utility (other than betterments); and

WHEREAS, by Resolution No. 15-049, the Board authorized the Executive Director to execute a Design Build Contract for the 183 South Project with Colorado River Constructors ("CRC"); and

WHEREAS, pursuant to the Design Build Contract, CRC is obligated to adjust and relocate utilities belonging to the City of Austin Water and Wastewater System ("the City") and to make betterments to the City's system as requested by the City; and

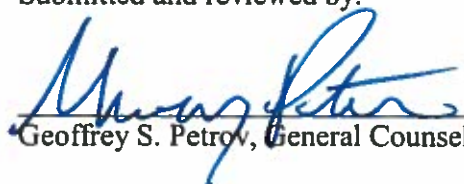
WHEREAS, the Executive Director and the City developed an Interlocal Agreement in order to clearly define roles and responsibilities for each of the parties, to define the payment obligations for the City for their requested betterments, and to identify the City's reimbursable efforts being provided to the Develop; and

WHEREAS, the Austin City Council approved the Interlocal Agreement attached hereto as Exhibit 1 on December 17, 2015.

NOW THEREFORE, BE IT RESOLVED, that the Board authorizes the Executive Director to finalize and execute an interlocal agreement with the City in the form or substantially in the form of the proposed Interlocal Agreement attached as Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of March 2016.

Submitted and reviewed by:


Geoffrey S. Petrov, General Counsel

Approved:


Ray A. Wilkerson
Chairman, Board of Directors

Exhibit 1

**INTERLOCAL AGREEMENT FOR THE ADJUSTMENTS OF CITY OF AUSTIN
WATER AND WASTEWATER SYSTEM UTILITIES IN CONNECTION WITH THE
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT**

THIS AGREEMENT is made by and between the Central Texas Regional Mobility Authority ("Mobility Authority") and the City of Austin, Texas, a Texas home rule municipal corporation ("City"), hereinafter referred to as the "Parties", and each as a "Party".

WITNESSETH

WHEREAS, Transportation Code, Chapter 370.161, authorizes Mobility Authority to acquire, construct, operate, maintain, or expand a transportation project in Travis County;

WHEREAS, Subchapter E of Transportation Code Chapter 370 allows Mobility Authority to use the design-build method for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration or repair of a transportation project;

WHEREAS, Transportation Code, Chapter 370.170 grants to Mobility Authority the power to install, construct, relocate and remove public utilities in, on or under a transportation project and to pay the cost of the relocation, removal, or grade separation of a public utility (other than betterments);

WHEREAS, the Interlocal Cooperation Act (chapter 791 of the Government Code) authorizes an interlocal contract between local governments and a political subdivision of the State, and authorizes the parties, in performing a service under the contract, to apply the law applicable to a party, as agreed by the parties;

WHEREAS, Mobility Authority's Board has authorized Mobility Authority to undertake and complete a transportation project generally described as: the Bergstrom Expressway (183 South) Project ("Project");

WHEREAS, City possesses utility facilities and appurtenances that are or may be in locational conflict with the Project and/or with the ultimate configuration of the Project (the "City Utilities")

WHEREAS, the Mobility Authority intends to execute with a private entity (the "D/B Contractor") a certain Design/Build Contract ("D/BC") which will obligate the D/B Contractor to design and construct the Project, pursuant to Subchapter E of Chapter 370 of the Texas Transportation Code;

WHEREAS, the D/B Contractor's obligation to design and construct the Project includes the obligation to adjust and relocate the City Utilities as necessary to accommodate the Project (the "City Adjustments").

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them kept and performed as hereafter set forth, Mobility Authority and City do agree as follows:

AGREEMENT

1. Time Period Covered

This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the Effective Date of this Agreement shall be the date on which it becomes effective. This Agreement shall be in full force and effect until the Parties have completely performed their obligations as stated herein, unless earlier terminated, as provided.

2. Procurement

This is an interlocal agreement providing for the design and construction of the adjustment of City Utilities as necessary to accommodate the Project. Pursuant to § 791.012 of the Texas Government Code, Mobility Authority and the City agree to apply the law applicable to Mobility Authority in procuring the contractor to perform that work, including but not limited to, Texas Transportation Code, Chapter 370, Subchapter E.

3. Funding and Work Responsibilities

A. City's Payment

- 1) The City shall pay to the Mobility Authority within 45 days of receiving the Mobility Authority's invoice a single payment in the full amount of the "City's Total Payment Obligation." The City's Total Payment Obligation shall be an amount equal to the "City's Costs for Betterments," less the "City's Property and Services Contribution." The terms "City's Costs for Betterments," and "City's Property and Services Contribution," are defined as follows:
 - a. "City's Costs for Betterments" The City intends to improve certain segments of utility infrastructure affected by the Project. The improvements, which will consist of upgrades and new infrastructure, are hereafter referred to as the "Betterments," and are described in Exhibit B attached hereto. The term "City's Costs for Betterments," means the City's maximum contribution obligation for Betterments. The City's Cost for Betterments shall not exceed the amount stated in Exhibit A and shall not be increased unless the Parties agree to a modified scope of work.
 - b. "City's Property and Services Contribution" The City is providing the Mobility Authority certain property interests and services in support of the Project, which are collectively termed, for the purposes of this agreement, the "City's Property and Services

Contribution.” The City’s Property and Services Contributions includes easements needed for completion of the Project, 30% design documents for the City Adjustments and Betterments, and “Special Administrative Costs,” that will be incurred in the City’s dedication of staff specifically to carry out its design review and support, permitting obligations, inspection, and Project Management in the interest of efficient Project completion. The Special Administrative Costs, as specified in Exhibit A are a lump sum and shall not be increased, except as stated in the following section 3.A.2.

2) *Modification of Special Administrative Costs.* If substantial completion or final completion of the Project is delayed by more than two months, the Parties shall meet in good faith to determine the amount of additional cost incurred by the City, if any, by such delay and to determine the means for the Mobility Authority’s prompt reimbursement for such additional costs. If the Parties are unable to agree on the amount of additional costs, the dispute shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. The Parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Travis County, Texas, unless another location is mutually agreed upon. Any settlement agreements reached through mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

3) [RESERVED]

4) Whenever funds are paid or remitted by the City to Mobility Authority under this Agreement, the City will remit a warrant made payable to the "Central Texas Regional Mobility Authority." The warrant will be deposited by Mobility Authority in an escrow account to be managed by Mobility Authority. Until the final Project accounting, funds in the escrow account may only be applied by Mobility Authority to the City Adjustment Costs.

5) [RESERVED]

6) Payment or reimbursement by either Party City under this contract beyond the end of the current fiscal year is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party. To the extent that the City shall owe to the Mobility Authority payment under the preceding subsection 3.A, such payment may be subject to the approval of the City Council of the City of Austin. Such payment shall be made within a reasonable period of time, subject to the City Council schedule.

B. Performance of Work

1) City agrees that, subject to the terms of this Agreement, Mobility Authority, through its D/B Contractor and subcontractors selected by D/B Contractor, shall effect the adjustment of the City Utilities that are in locational conflict with the Project, as such are determined by Mobility Authority, the City, and/or D/B Contractor, and shall also construct the Betterments, on behalf of Mobility Authority. The City acknowledges that D/B Contractor is an independent contractor of Mobility Authority. The D/BC by and between Mobility Authority and the D/B Contractor confers third-party beneficiary status to the City which extends to and includes any and all warranty and indemnity provisions of the D/BC. Mobility Authority agrees to incorporate within the D/BC provisions requiring the D/B Contractor to comply with the standards for design and construction contained in this Agreement. Mobility Authority shall enforce all D/BC provisions requiring the D/B Contractor to comply with the standards for design and construction contained in this Agreement and shall provide reasonable support for the City's enforcement of its third-party claims against the D/B Contractor.

2) Mobility Authority will authorize the performance of only those City Adjustment items of work which are eligible for relocation reimbursements or for which City has requested and has agreed to pay for as described in this Agreement. This Agreement shall include Exhibit A, *City Adjustment Costs*, which includes the costs for which the City shall be responsible.

3) The Mobility Authority may not allow the D/B to begin work on City Adjustments until final plans have been approved by the City.

C. Preparation of Plans

The 30% design plans, specifications, and cost estimates necessary to adjust the City's facilities, and the full plans, specifications, and cost estimates necessary to complete the Betterments (collectively the "Preliminary Plans"), are attached to this Agreement as Exhibit B. The parties agree that after this Agreement is executed, the Preliminary Plans will be finalized, and the finalized Plans will be substituted for the Preliminary Plans that are attached to this Agreement at execution, and the finalized plans will then become the "Plans" for the purposes of this Agreement. The finalized Plans shall be designated as "Reviewed and Approved for Construction" by the City. Exhibit of the finalized Plans to this Agreement shall be by amendment which shall be administrative in nature and will not require the approval of the governing authority of either Party, but shall require the signature of the Assistant City Manager overseeing the City's Water Utility or his designee for the City and the _____ for Mobility Authority. The Parties agree that the finalized Plans will be generally consistent with the preliminary Plans. Each Party represents and warrants that the finalized Plans as attached to this Agreement after execution are approved as to the location and manner in which the utilities will be installed, adjusted, or relocated within the Project right of way (the "ROW"), subject to the D/B Contractor's satisfactory performance of the City Adjustments in accordance with the Plans.

D. Design and Construction Standards

1) Mobility Authority shall require in the D/BC that all design and construction performed for the City Adjustments, and construction performed for the Betterments, by the D/B Contractor shall comply with and conform to the following:

- a. All applicable local and state laws, regulations, decrees, ordinances and policies, including the Utility Accommodation Rules (UAR), the Utility Manual issued by TxDOT (to the extent its requirements are mandatory for the City Adjustments necessitated by the Project), and the policies of Mobility Authority;
- b. All Federal laws, regulations, decrees, ordinances and policies applicable to projects receiving Federal funding, financing and/or credit assistance, including without limitation 23 CFR 645 Subparts A and B; and the Buy America provisions of 23 U.S.C § 313 and 23 CFR 635.410.
- c. The terms of all governmental permits or other approvals, as well as any private approvals of third parties necessary for such work;
- d. The standard specifications, standards of practice, and construction methods (collectively, "standards") which City customarily applies to utility facilities comparable to the City Utilities that are constructed by the City or for the City by its contractors at the City's expense, which standards are current at the time this Agreement is signed by the City, and which include but are not limited to: (i) the Utility Criteria Manual, (ii) the Standard Products List, and (iii) Technical Criteria Manuals. The City agrees to provide these materials to Mobility Authority and the D/B Contractor in writing (including email transmission of documents).
- e. The completed Plans; and
- f. The warranty provided by D/B Contractor in the D/BC with regard to all other work performed under the D/BC.

2) Mobility Authority shall require the D/B to carry insurance of the types and in amounts no less than those specified in the attached Exhibit "D" and shall ensure that the City is named as an additional insured on such policies.

3) Mobility Authority shall require in the D/BC that such design and construction also shall be consistent and compatible with (i) the D/B Contractor's current design and construction of the Project, (ii) the "Ultimate Configuration" for the Project, and (iii) any other utilities being installed in the same vicinity. In case of any inconsistency among any of the standards referenced in this Agreement, the most stringent standard shall apply.

4) The Plans shall identify all utility facilities that the City intends to abandon in place rather than remove, including material type, quantity, size, age, condition (if known), and method of abandonment, which shall be subject to Mobility Authority's approval.

5) For any asbestos cement ("AC") pipe removal work, the D/B Contractor shall follow the National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), the Occupational Safety and Health Administration ("OSHA"), the Texas Department of State Health Services ("TDSHS"), and the City's established procedures and requirements. In the event of any contamination caused by the pipeline removal, the D/B Contractor shall be responsible for that remediation.

6) With the exception of undisturbed AC pipe as approved to remain in place, no facilities containing hazardous or contaminated materials may be abandoned, but shall be specifically identified and removed in accordance with the requirements of this Agreement. The Mobility Authority agrees to pay for the assessment and remediation or other corrective actions relating to soil and groundwater contamination caused by the utility facility prior to the removal.

7) The City agrees that all service meters must be placed outside of the Project ROW unless otherwise agreed by Mobility Authority.

E. City Provided Services

In addition to services provided by the City as specified elsewhere in this Agreement, the City shall provide the following services:

1) Review any and all plans addressed in the preceding section 3.C in a timely manner for substantial compliance with the requirements of this agreement and applicable City procedures, Legal Requirements and City Standards, and will approve all Plans and Specifications that comply with these requirements in all material respects within a reasonable period of time after submission.

2) Reasonable assistance to D/B Contractor in obtaining any necessary local or municipal permits as not otherwise provided for under the D/BC, as may be required for the City Adjustments and the Betterments.

3) Throughout the City Adjustment work, and the Betterment work, hereunder, the City shall provide adequate inspectors and appropriate supporting resources for such construction. The work shall be inspected by the City's inspector(s) at least once each working day, and more often if such inspections are deemed necessary by City. Further, upon request by the D/B Contractor or its contractors, the City shall furnish an inspector at any reasonable time in which construction is underway pursuant to this Agreement, including occasions when construction is underway in excess of the usual forty (40) hour work week and at such other times as reasonably required. The City agrees to promptly notify the D/B Contractor and Mobility Authority of any concerns resulting from any such inspection.

4) For this Agreement, "Substantial Completion," means that construction of one or more segments of the City Adjustments has been substantially completed in accordance

with the Plans with the exception of only minor punch list items. Further, with regard to water and wastewater lines construction, Substantial Completion means that the City Adjustments, including all testing and disinfection in accordance with the City of Austin 510 Pipe Specifications, have been completed and accepted, including "as-built" drawings have been provided, costs and quantities have been provided, a certified letter from the D/B Contractor's design engineer indicating that the City Adjustments were constructed in accordance with the Plans and that installation of all components is in accordance with all the design and construction standards as stated in this Agreement, and the line(s) placed into service. Work that remains after Substantial Completion could include the final pavement of roadways, adjustment of structures to final grade and revegetation.

- a. When the D/B Contractor considers that the City Adjustments, or a segment thereof which the City agrees to accept separately, are substantially complete, the D/B Contractor shall notify Mobility Authority and the City and request a determination as to whether the City Adjustments or a designated segment thereof are substantially complete. If the City does not consider the City Adjustments, or a segment thereof, substantially complete, the City will notify Mobility Authority and the D/B Contractor giving reasons therefor. After performing any required work, the D/B Contractor shall then submit another request for the City to determine Substantial Completion. If the City considers the City Adjustments (or a segment thereof) to be substantially complete, the City will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, and shall include a punch list of items ("Punch List Items") to be completed or corrected. In each case, the City shall provide such determination within 14 days of the notice from the D/B Contractor. Failure to include an item on the Punch List Items does not alter the responsibility of Mobility Authority to cause the completion of the City Adjustments in accordance with this Agreement.
- b. Mobility Authority shall cause completion of all Punch List Items no later than final acceptance of the Project, subject to Force Majeure Delays, as that term is defined in the D/BC.
- c. Mobility Authority shall cause the D/B Contractor to provide the City with a certified letter indicating that the City Utilities are free and clear of all liens, claims and encumbrances.
- d. Mobility Authority and/or the D/B Contractor shall have the obligation to maintain the adjusted City Utilities until the City accepts the adjusted City Utilities as stated herein.

5) By final acceptance of the Project, Mobility Authority shall cause the D/B Contractor to submit to the City written documentation showing that the Punch List Items have

been satisfactorily completed, along with the letters described in subsection (3) above. Also by final acceptance of the Project, Mobility Authority and/or the D/B Contractor shall provide the City with final "as-built" drawings of the City Adjustments and Betterments.

6) Within 30 days of receiving documentation described in subsection (4) above, the City shall perform a final inspection of the adjusted City Utilities, including conducting any tests as are necessary or appropriate, and that are not the obligation of D/B Contractor as stated in 3.G. below, and accept such construction by giving written notice of such acceptance to Mobility Authority and D/B Contractor. If the City does not accept the construction, then the City shall, not later than the 15th business day after the inspection of the adjusted City Utilities, notify Mobility Authority and D/B Contractor in writing of the grounds for non-acceptance. Mobility Authority and D/B Contractor shall notify the City in writing upon completion of corrections to the non-conforming work. With regard to any re-inspection (and re-testing if appropriate) of any revised construction, Mobility Authority, the D/B Contractor, and the City shall follow the same notice and inspection schedule set forth above.

7) From and after the City's acceptance of an adjusted City Utility, the City agrees to accept ownership of, and full operation and maintenance responsibility for, such City Utility. The City shall not have ownership and operation and maintenance responsibility for any adjusted City Utility until the City has accepted such City Utility in accordance with the preceding section 3.E.5.

8) At the D/B Contractor's request, the City shall assist the D/B Contractor in locating any City Utilities (including appurtenances) which are owned and/or operated by City and may be impacted by the Project. Without limiting the generality of the foregoing, or limiting D/B Contractor's obligation under the D/BC to make inspections and investigations necessary to locate and avoid existing utilities, in order to help facilitate that neither the adjusted City Utilities nor existing, unadjusted utilities owned or operated by the City are damaged during construction of the Project, the City shall make reasonable attempts based on available "as built" information, to mark in the field the location of all such utilities horizontally on the ground in advance of Project construction in the immediate area of such utilities.

F. Mobility Authority Provided Services

1) In addition to services provided by Mobility Authority as specified elsewhere in this Agreement, Mobility Authority shall provide the following services:

- a. Provide plans to the City for review and approval in accordance with the preceding section 3.C. and 3.E..
- b. Participate with D/B Contractor in inspections of the work by the City.
- c. Permit City's inspectors and other authorized representatives to inspect the City Adjustments at all times.
- d. Ensure delivery of as-built drawings to City

2) The Mobility Authority shall ensure that the D/B Contractor will provide the following services and documentation

- a. Project management during the City Adjustments and perform the City Adjustments
- b. Documentation of any field modifications occurring in the City Adjustments
- c. As-built plans of the City Adjustments for Mobility Authority and the City
- d. Detailed records of work and payments to manage and account for the City's funds that have been escrowed with Mobility Authority
- e. Maintain a job file
- f. Maintenance of all adjusted facilities until City acceptance
- g. Secure any necessary local or municipal permits as not otherwise provided for under the D/BC, as may be required for the City Adjustments, with the reasonable assistance of the City
- h. The D/B shall not begin work on any portion of the City Adjustments until the City has approved the final plans for such work.

G. Betterments

1) For purposes of this Agreement, unless otherwise specified, the term "Betterment" means any upgrading of a City Utility being adjusted that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the City, including but not limited to an increase in the capacity, capability, efficiency or function of the adjusted City Utility over that provided by the existing City Utility facility or an expansion of the existing City Utility facility; provided, however, that the following are not considered Betterments:

- a. any upgrading which is required for accommodation of the Project;
- b. replacement devices or materials that are of equivalent standards although not identical;
- c. replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- d. any upgrading required by applicable laws, regulations, codes or ordinances;

- e. replacement devices or materials which are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); or
- f. any upgrading required by the City's written "standards" meeting the requirements of Paragraph 3.D.(1)(d).

2) It is understood and agreed that Mobility Authority shall not pay for any Betterments and that the City shall be solely responsible therefore. No Betterment may be performed hereunder (i) which is incompatible with the Project or the Ultimate Configuration, (ii) which cannot be performed within the other constraints of applicable law or any applicable governmental approvals, or (iii) which cannot be performed within the requirements of the Project schedule.

3) The determinations and calculations of Betterment described in this Paragraph 3.H. shall exclude right of way acquisition costs. Betterment in connection with right-of-way acquisition is addressed in Paragraph 4.

4) The total costs for all Betterments performed pursuant to this Agreement are included within the City Adjustment Costs shown on Exhibit A. The City Adjustment Costs shall not be modified on account of Betterments unless a change in the scope of work occurs, as referenced in subsections 3.A.2) and 3.A.3).

4. Real Property Interests

A. Definitions Relevant to this Article 4, *Real Property Interests*

1. *Applicable Law*, for the purposes of this Article 4, *Real Property Interests*, means any law, code, regulation, or ordinance applicable to the acquisition of interests in real property for the Project, including, without limitation, all Federal laws, regulations, decrees, ordinances and policies applicable to projects securing Federal Funds, 42 U.S. Code Chapter 61 – *Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs*; and state and local laws, regulations, decrees, ordinances and policies, including without limitation the Texas Property Code, Texas Transportation Code §§ 370.161- 370.193, *Acquisition, Construction, and Operation of Transportation Projects*, and Texas Parks and Wildlife Code, §§ 26.001- 26.004, *Protection of Public Parks and Recreational Lands*.
2. *Betterment Property Interests*, for the purposes of this Article 4, *Real Property Interests*, means any new easement or other interest in real property outside of the Project right of way that is not attributable to the Project, and that is made solely for the benefit and at the election of the City and is not required in order to comply with any other law, code, or ordinance.

3. *Existing Utility Property Interests*, for the purposes of this Article 4, *Real Property Interests*, means any right, title, claim, including prescriptive rights, or interest in real property claimed by the City with respect to the City Utilities in their existing location(s)
 4. *Mobility Authority*, for the purposes of this Article 4, *Real Property Interests*, means the Mobility Authority or its lawfully designated agent for acquiring Betterment Property Interests and Replacement Utility Property Interests.
 5. *Replacement Utility Property Interests*, means any new dedicated water or wastewater utility easement in real property outside of the Project right of way that is attributable solely to the Project and is required to comply with an applicable law, code, or ordinance.
- B.** City to provide documentation of Existing Utility Property Interests. The City has provided, or upon execution of this Agreement shall promptly provide to Mobility Authority documentation indicating any Existing Utility Property Interest
- C.** Acquisition of Property Interests in City-owned land. For those portions of the City Adjustments that require the relocation of utilities to a Replacement Property Interest owned by the City, the City will undertake the acquisition and establishment of easements in that City-Owned property at the cost of the Mobility Authority, pursuant the Applicable Laws.
- D.** Acquisition of Property Interests in Land Not Owned by the City. The Mobility Authority shall be responsible for acquiring Replacement Property Interests and Betterment Property Interests as follows.
1. If acquisition of Replacement Property Interests is necessary, then the Mobility Authority shall be responsible for undertaking such acquisition, with the assistance of the City. The City shall use reasonable efforts to assist the Mobility Authority if necessary. Mobility Authority shall ensure that each acquisition complies with Applicable Law. Acquisition of Replacement Property Interests is at the Mobility Authority's cost
 - a. Mobility Authority use easement forms provided by the City. Any alterations and/or revisions to the easement forms are subject to approval by the City, which shall not be unreasonably withheld.
 - b. Mobility Authority acknowledges that the City's easement forms may contain rights not contained within the forms covering the Existing Utility Property Interests. Any difference in the rights between the Existing Utility Property Interest forms and the easement forms provided by the City are NOT to be considered "Betterments.
 - c. For each Existing Utility Property Interest located within the final

Project right of way upon completion of the related City Adjustment work and its acceptance by the City, the City agrees to execute a quitclaim deed or other appropriate documentation (e.g. release of easement) relinquishing such Existing Utility Property Interest to Mobility Authority, unless the affected City Utility is remaining in its original location or is being reinstalled in a new location within the area subject to such Existing Utility Property Interest. All quitclaim deeds or other relinquishment documents shall be subject to Mobility Authority's reasonable approval provided, however such documents shall release the City's interests in the Existing Utility Property Interest on an "as-is, where-is" basis and the City shall not be required to give any warranty of title. For each such Existing Utility Property Interest relinquished by the City, Mobility Authority shall do one of the following to compensate the City for such Existing Utility Property Interest, as appropriate:

- (1) If the City or the D/B Contractor on behalf of the City acquires a Replacement Utility Property Interest for the affected City Utility, Mobility Authority shall pay or cause the D/B Contractor to pay the City for the City's actual acquisition costs in accordance with the terms of this Article 4; or
- (2) If the City does not acquire a Replacement Utility Property Interest for the affected City Utility, Mobility Authority shall compensate the City or cause the D/B Contractor to compensate the City for the fair market value of such relinquished Existing Utility Property Interest, as mutually agreed between the City and Mobility Authority and supported by an independent appraisal performed by a State Certified General Real Estate Appraiser. In the event City and Mobility Authority cannot agree on the fair market value of such relinquished Existing Utility Property Interest, the City and Mobility Authority may each engage at their expense a State Certified General Real Estate Appraiser, and the fair market value of such relinquished Existing Utility Property Interest for purposes hereof shall be the mean value between the two appraisals.

d. The compensation provided to the City pursuant to this Article 4.C.1 shall constitute complete compensation to the City for the relinquished Existing Utility Property Interest and any Replacement Utility Property Interest, and no further compensation shall be due to the City the Mobility Authority on account of such Existing Utility Property Interest or Replacement Utility Property Interest(s).

2. If acquisition of Betterment Property Interests is necessary, then the City shall be responsible for the costs of acquiring such interest
 - a. City payment for Betterment Property Interests will be based on a fair market appraisal and will only be composed of the portion of the property interest in excess of the size of the required by Applicable Law.
 - b. The City's obligation for the costs of acquiring Betterment Replacement Property Interests shall not exceed the fair market value of such interest as determined in accordance with an appraisal prepared in accordance with Applicable Law.
 - c. The appraisal of any Betterment Replacement Property Interest is subject to the City's review and approval prior to the Mobility Authority's entering into any purchase agreement for the interest

E. The City shall execute a Utility Joint Use Acknowledgment for each City Adjustment where required pursuant to Mobility Authority policies. All City Joint Use Acknowledgments shall be in substantially the form attached to this Agreement as Exhibit " _".

5. Termination

- A.** This Agreement may be terminated in the following manner:
 - 1) By mutual written agreement and consent of both parties;
 - 2) By either party upon the failure of the other party to cure an Event of Default as provided below;
 - 3) By either party if a party fails to appropriate funds for the completion of this Project; or
 - 4) By either party if the Project is cancelled or modified so as to eliminate the necessity of the Adjustment work described herein. Upon such termination, the parties shall negotiate in good faith an amendment that shall provide mutually acceptable terms and conditions for handling the respective rights and liabilities of the parties relating to such termination. In particular, and without limitation, each party shall be liable to the other for its share of any costs incurred by the other party prior to receipt of notice of termination, and for its share of any costs incurred by the other party after receipt of notice of termination, and which could not be reasonably avoided.
- B.** In the event either party fails to perform its material obligations as set forth in this Agreement (an "Event of Default"), the other party (the "Non-Defaulting Party") shall provide prompt written notice of such failure. The party receiving the notice (the "Defaulting Party") shall then have thirty (30) days in which to cure the Event of Default, or if the failure is such that it cannot be cured in thirty days, to

make substantial and continued progress toward curing the Event of Default within a reasonable time. In the event that, after written notice as provided herein, the Defaulting Party fails, within thirty days, to cure the Event of Default, or, if the Event of Default is such that it cannot be cured in thirty days, to make substantial and continued progress toward curing the Event of Default within a reasonable time, then the Non-Defaulting Party, by further written notice to the Defaulting Party, may immediately terminate this Agreement.

- C. If the Agreement is terminated in accordance with the above provisions, City will be responsible for the payment of its share of City Adjustment Costs incurred by Mobility Authority on behalf of City up to the time of termination.

6. Right of Access

If City is the owner of any part of the Project site, City shall permit Mobility Authority, D/B Contractor, or their authorized representatives to have access to the site to perform any activities required to execute the City Adjustments.

7. Responsibilities of the Parties and Indemnity

City acknowledges that it is not an agent, servant, or employee of the Mobility Authority or D/B Contractor, nor is it engaged in a joint enterprise with either of them, and it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the City Adjustments. **TO THE EXTENT PERMITTED BY TEXAS LAW, CITY AGREES THAT IT IS RESPONSIBLE, TO THE EXCLUSION OF ANY SUCH RESPONSIBILITY OF THE MOBILITY AUTHORITY, ITS AGENTS AND EMPLOYEES, FOR ANY AND ALL LIABILITY, SUITS, ACTIONS, AND CLAIMS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT THAT THEY ARE CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS AND/OR THE NEGLIGENT ACTS OR OMISSIONS OF ITS EMPLOYEES, PROFESSIONAL CONSULTANTS, CONTRACTORS, AND AGENTS, DURING THEIR PERFORMANCE OF WORK AND IN CONSEQUENCE WITH THE PERFORMANCE OF THE DESIGN, CONSTRUCTION, MAINTENANCE AND OPERATION OF THE CITY UTILITIES AND/OR THE ADJUSTED UTILITIES, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION. THE CITY IS NOT RESPONSIBLE FOR ANY LIABILITY, SUITS, ACTIONS, AND/OR CLAIMS FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT THAT THEY ARE CAUSED BY ANY OTHER ENTITY, INCLUDING THE MOBILITY AUTHORITY, ITS EMPLOYEES, PROFESSIONAL CONSULTANTS, CONTRACTORS, AND/OR AGENTS. SUCH RESPONSIBILITY INCLUDES BUT IS NOT LIMITED TO ANY CLAIMS OR AMOUNTS ARISING OR RECOVERED UNDER THE**

"WORKERS COMPENSATION LAW," THE TEXAS TORT CLAIMS ATC, CHAPTER 101, TEXAS CIVIL PRACTICE AND REMEDIES CODE; OR ANY OTHER APPLICABLE LAWS OR REGULATIONS, ALL AS TIME TO TIME MAY BE AMENDED.

8. Entire Agreement

This Agreement embodies the entire agreement between the parties, supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter, and there are no oral or written agreements between the parties or any representations made which are not expressly set forth herein.

9. Successors and Assigns

Mobility Authority and City each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

10. Amendments

This Agreement may be amended only in a writing signed by both parties.

11. Notices

All notices to either party by the other required under this Agreement shall be delivered by receipted overnight delivery service, addressed to such party at the following addresses:

CITY: _____ _____ _____ _____	MOBILITY AUTHORITY: [name of person or office] Central Texas Regional Mobility Authority 3300 N. IH-35, Suite 300 Austin, Texas 78705
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All notices shall be deemed given on the date so delivered, unless otherwise provided in this Agreement. Either party may change the above address by sending written notice of the change to the other party.

12. Approvals

Any acceptance, approval, or any other like action (collectively "Approval") required or permitted to be given by either the City or Mobility Authority pursuant to this Agreement:

- A. Must be in writing to be effective (except if deemed granted pursuant hereto), and
- B. Shall not be unreasonably withheld or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

13. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

[Remainder of Page Left Blank]

THIS AGREEMENT IS EXECUTED by Mobility Authority and the City in duplicate.

THE CITY


Signature

Robert Goode
Typed or Printed Name
Assistant City Manager

Title

5/24/15
Date

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY


Signature

Typed or Printed Name

Title

Date

EXHIBIT A
FUNDING AND CONTRIBUTIONS

EXHIBIT B
THE PLANS

EXHIBIT C

FORM OF UTILITY JOINT USE ACKNOWLEDGMENT

I

EXHIBIT D

DB INSURANCE REQUIREMENTS

10. INSURANCE.

D/B Contractor shall purchase and continuously maintain in full force and effect through Project Final Acceptance, or such longer or shorter time as may be specifically provided below, the insurance coverages specified in this Section 10. These insurance coverage requirements are also subject to all other applicable sections of the Contract Documents. The insurance, except for professional liability and worker's compensation, provided hereunder shall be available for the benefit of the Mobility Authority and D/B Contractor with respect to covered claims, but shall not be interpreted to relieve D/B Contractor of any obligations hereunder. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by the Mobility Authority and authorized or approved to do business in the State. All limits of liability set forth below are in U.S. dollars.

10.1 [Reserved].

10.2 Insurance After Issuance of NTP1.

During the period commencing with the date on which the Mobility Authority issues NTP1 and ending at Project Final Acceptance (unless otherwise specified herein), D/B Contractor shall provide and maintain insurance as specified in this Section 10.2.

10.2.1 Commercial General Liability Insurance.

(a) D/B Contractor shall provide and maintain commercial general liability coverage (for bodily injury, property damage, personal injury and advertising injury) during the period starting on the date on which the Mobility Authority issues NTP1 and ending on the date of Final Acceptance using an ISO CG 00 01 (12/07) occurrence form (or equivalent), specifically including coverage for contractual liability per standard ISO policy terms, premises operations,

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT

D/B CONTRACT
ADDENDUM NO. 2 TO RFDP

independent contractors, products and completed operations, broad form property damage and hazards commonly referred to as "XCU," with limits of \$2,000,000 per occurrence and \$4,000,000 general per project aggregate. The policy shall not include any professional liability exclusion as it relates to "means and methods" of construction. The definition of "Insured Contract" in the policy should be amended to state that "professional services" does not include "means and methods" of construction. The policy shall include the Limited Exclusion-Contractors-Professional Liability Endorsement CG22-80, CG22-79, or their equivalent. There shall be no exclusion for work performed on or within 50 feet of any railroad property. The definition of "Insured Contract" in the policy shall include that part of any contract or agreement that indemnifies a railroad for bodily injury or property damage arising out of construction or demolition operations on or within 50 feet of any railroad property. The policy shall include a "Limited Coverage – Repair Work Endorsement" that shall extend coverage under the policy for warranty repair work from Final Acceptance until the end of the Warranty Period. The policy shall include products and completed operations extended coverage in the amount of \$4,000,000, and this coverage shall be maintained until the end of the Warranty Period. D/B Contractor shall be the named insured and each of the Indemnified Parties, including the Railroad(s), shall be additional insureds, on a primary and non-contributory basis. The policy deductibles shall not exceed 5% of the policy limits.

(b) If D/B Contractor's commercial general liability insurance or other form with a general aggregate limit is used, then the aggregate limits shall apply separately to the Project, or D/B Contractor may obtain separate project specific insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of D/B Contractor. The policy terms, conditions, coverage and limit requirements for the project specific policy are the same as referenced in (a) above. Notwithstanding any other provision of the Contract Documents, the project policy shall not be cancellable, except for non-payment of premium, fraud, material misrepresentation, or non-compliance with reasonable loss control recommendations.

10.2.2 Umbrella Excess Liability.

(a) D/B Contractor shall provide and maintain umbrella excess liability coverage with limits of \$30,000,000 per occurrence and \$30,000,000 per project aggregate on the same basis as outlined in Sections 10.2.1 (a) or (b) above, 10.2.3 and 10.2.4. Any such umbrella excess insurance shall be at least as broad as D/B Contractor's primary insurance.

10.2.3 Workers' Compensation Insurance and Employer's Liability Insurance.

During the period commencing on the date on which the Mobility Authority issues NTP1 and ending on the date of Project Final Acceptance, D/B Contractor shall provide and maintain worker's compensation insurance in conformance with applicable Law and employer's liability

Ex. D 2 of 10

insurance (for bodily injury or disease) with limits of \$1,000,000 per accident for all of its employees involved with the performance of the Design/Build Work. D/B Contractor shall be the named insured on these policies. The worker's compensation coverage will contain the following endorsements:

- (a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act.
- (b) A voluntary compensation endorsement.
- (c) An alternate employer endorsement.
- (d) An endorsement extending coverage to all states operations on an "if any" basis.

10.2.4 Business Automobile Liability Insurance.

D/B Contractor shall provide and maintain business automobile liability insurance, commencing on the date on which the Mobility Authority issues NTP1 and ending upon the date of Project Final Acceptance, covering the D/B Contractor's legal liability arising out of the ownership, operation, maintenance or use of all owned/leased, non-owned and hired vehicles used in the performance of the Design/Build Work, including loading and unloading, with limits of not less than \$2,000,000 combined single limit for bodily injury and property damage liability; provided, however, that such coverage shall be maintained for vehicles used in performance of Warranty work until the expiration of the Warranties. D/B Contractor shall be the named insured and each of the Indemnified Parties shall be named as additional insureds, on a primary and non-contributory basis, with respect to liability arising out of the acts or omissions of any member of the D/B Contractor Group, whether occurring on or off of the Site. The policy shall include auto pollution liability coverage. The policy deductibles shall not exceed 5% of the policy limits.

10.2.5 Professional Liability Insurance.

D/B Contractor shall provide and maintain or cause its lead design Subcontractor to provide professional liability coverage, through a specific project professional liability policy, with limits not less than \$10,000,000 per negligent act, error or omission limit and \$10,000,000 aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering services performed by the D/B Contractor's lead design Subcontractor or its lower tier design subcontractors or subconsultants. The policy shall have a retroactive date no later than the date on which the RFDP Documents are issued and shall have a five-year extended reporting period from the date of Final Acceptance with respect to claims or suits which were not made or brought during the term of the policy. The coverage shall include the D/B Contractor's lead design Subcontractor and its design subcontractors and

subconsultants of any tiers. The policy shall include a Notice of Circumstance provision. The policy shall not contain any exclusion for cost estimates or delay in project completion. Notwithstanding any other provisions of the Contract Documents, the project policy shall not be cancellable, except for non-payment of premium, fraud, material misrepresentation, or pursuant to a material variance endorsement. As an alternative to the project specific coverage described above, the D/B Contractor may instead substitute the professional liability coverage that it or its lead design firm carries provided that (a) such coverage is in the amount of at least \$20,000,000 per negligent act, error or omission and \$20,000,000 aggregate, (b) such policy is maintained until at least five (5) years following Substantial Completion of the Project, and (c) the owner of the policy provides the Mobility Authority, on an annual basis, with a current certificate of insurance and a copy of its financial statements, including balance sheet, income statement, and statement of cash flow.

10.2.6 Pollution Liability Insurance.

D/B Contractor shall provide and maintain Contractor's Pollution Liability coverage on an occurrence basis, through a Specific Project Pollution Liability Policy, with limits not less than \$5,000,000 per "pollution incident" and \$5,000,000 aggregate. The pollution liability coverage shall protect against the D/B Contractor's legal liability arising out of any construction and related activities with respect to the Project, including off site activities related to transportation and/or disposal. The policy shall provide coverage from the date on which the NTP1 is issued until five (5) years from the date of Final Acceptance. The policy shall include coverage for damage (including loss of use of) to natural resources. Each of the Indemnified Parties shall be named as an additional insured, on a primary and non-contributory basis, to this policy with respect to liability arising out of the acts, errors, and omissions of any member of the D/B Contractor Group and Subcontractors whether occurring on or off of the site. Notwithstanding any other provisions of the Contract Documents, the project policy shall not be cancellable, except for non-payment of premium, fraud, material misrepresentation, or non-compliance with reasonable loss control recommendations.

10.2.7 Builder's Risk.

D/B Contractor shall procure and maintain builder's risk insurance for the Project as specified below. The insureds shall be D/B Contractor, all Subcontractors (excluding those solely responsible for design Design/Build Work) of any tier, and each of the Indemnified Parties, as their interests may appear. The insurance shall be maintained during the period starting on the date of commencement of construction and ending on the date of Substantial Completion.

10.2.7.1 Minimum Scope: A blanket builder's risk insurance policy on an "all risk" basis for the entire Project including: (1) coverage for resulting property damage

caused by faulty workmanship, use of Nonconforming Work materials, omission or deficiency in design or specifications; (2) coverage against damage or loss caused by the perils of fire (with extended coverage), earth movement, flood, theft, vandalism and malicious mischief and machinery accidents; (3) coverage for removal of debris, contaminants and pollutants (as defined in the policy) including demolition from the enforcement of any applicable local, state, or federal requirement, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the Project; (4) inland transit coverage (ocean marine coverage, if applicable, shall be provided through a separate Ocean Marine insurance policy unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site, and (6) coverage for architect and engineering fees required as a result of a covered loss. Such insurance shall be on a form acceptable to the Mobility Authority and shall have a limit equal to the probable maximum loss to replace the completed Project plus "soft cost expense cover," as defined in the policy (including, at a minimum, attorneys' fees and fees and other costs associated with such damage or loss and with any Governmental Approvals), with a limit of \$5,000,000 and shall include flood insurance with a \$25,000,000 minimum annual aggregate limit. There shall be no coinsurance penalty provision in any such policy. Ocean Marine coverage, if applicable, shall be provided through this insurance or separate Ocean Marine insurance. Deductibles or self-insured retentions shall not exceed 5% of the policy limits.

10.2.8 Valuable Papers.

D/B Contractor shall provide valuable papers insurance with a limit of not less than \$200,000 each loss. Such insurance shall assure the restoration of any Plans, drawings, computations, field notes, or other similar data relating to the Design/Build Work and/or the Project in the event of loss or destruction until all such items and data are turned over to the Mobility Authority. Such insurance may be provided separately or as part of D/B Contractor's Builder's Risk policy.

10.3 General Insurance Requirements.

10.3.1 Premiums, Deductibles and Self-Insured Retentions.

D/B Contractor shall be responsible for payment of premiums for all insurance required under this Section 10. D/B Contractor shall be solely responsible for all other deductibles and self-insured retentions hereunder. D/B Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which D/B Contractor is responsible hereunder, D/B Contractor shall be solely responsible for amounts in excess of the coverage provided. With respect to all matters for which the Mobility Authority is

responsible hereunder, the Mobility Authority shall remain fully responsible for amounts in excess of the coverage provided.

10.3.2 Verification of Coverage.

(a) D/B Contractor Policies. Concurrently with the date on which coverage is required to be procured under this Section 10, D/B Contractor will deliver to the Mobility Authority original certificates of insurance, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Mobility Authority. The Mobility Authority shall have no duty to pay or perform under this D/B Contract until such certificate(s) shall have been delivered to the Mobility Authority. Upon the Mobility Authority's request, duplicate copies of each of the insurance policies (including all endorsements and amendments) required under Section 10 shall be provided to the Mobility Authority; provided that where the D/B Contractor is permitted to provide certain coverages through its corporate program, instead of providing copies, the D/B Contractor may make such policies available for inspection by the Mobility Authority at the D/B Contractor's corporate offices.

(b) Renewal Policies. When applicable, not less than 30 Days prior to the expiration date of any policy of insurance required by this Section 10, D/B Contractor shall deliver to the Mobility Authority a binder or certificate of insurance with respect to each renewal policy. If requested by the Mobility Authority from time to time, certified duplicate copies of the renewal policy shall also be provided; provided that where the D/B Contractor is permitted to provide certain coverages through its corporate program, instead of providing copies, the D/B Contractor may make such policies available for inspection by the Mobility Authority at the D/B Contractor's corporate offices.

10.3.3 Subcontractor Insurance Requirements.

D/B Contractor shall cause each Subcontractor to provide insurance that complies with requirements for D/B Contractor-provided insurance set forth in this Section 10 in circumstances where the Subcontractor is not covered by D/B Contractor-provided insurance and provided that D/B Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. D/B Contractor shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds on a primary and non-contributory basis, under such Subcontractor's commercial general liability, umbrella excess liability, and business automobile liability insurance policies. D/B Contractor shall require each such Subcontractor to

require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. The Mobility Authority shall have the right to contact the Subcontractors directly in order to verify the above coverage.

10.3.4 Endorsements and Waivers.

All insurance policies required to be provided by D/B Contractor hereunder shall contain or be endorsed to contain the following provisions, provided that, for the workers' compensation policy and the professional liability policy, only the following clause (d) shall be applicable:

(a) For claims covered by the insurance specified herein, said insurance coverage shall be primary insurance with respect to the insureds and additional insureds and shall specify that coverage continues notwithstanding the fact that D/B Contractor has left the Site. Any insurance or self-insurance beyond that specified in this D/B Contract that is maintained by an insured or additional insured shall be excess of such insurance and shall not contribute with such primary insurance.

(b) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds.

(c) The insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability.

(d) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, modified or reduced in coverage or in limits except after 30 days' prior written notice has been given to the Mobility Authority and D/B Contractor. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(e) All Commercial General Liability endorsements adding additional insureds shall be on forms CG-20-10 (latest edition) or an equivalent form providing additional insureds with coverage for premises/operations and CG 2037 (or equivalent) for completed operations.

(f) Each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability policies).

10.3.5 Waivers and Subrogation.

The Mobility Authority and D/B Contractor waive all rights against each other, against each of their agents and employees and their respective members, directors, officers, employees, agents and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this Section 10, except such rights as they may have to the proceeds of such insurance and provided further that D/B Contractor shall not be entitled to additional compensation or time extension under this D/B Contract to the extent compensated by any insurance specified herein. D/B Contractor shall cause all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy shall include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents and consultants).

10.3.6 Changes in Requirements.

The Mobility Authority shall notify D/B Contractor in writing of any changes in the requirements applicable to insurance required to be provided by D/B Contractor. Pursuant to a Change Order, any additional cost from such change shall be paid by the Mobility Authority and any reduction in cost shall reduce the Design/Build Price.

10.3.7 No Recourse.

There shall be no recourse against the Mobility Authority for payment of premiums or other amounts with respect to the insurance required to be provided by D/B Contractor hereunder.

10.3.8 Support of Indemnifications.

The insurance coverage provided hereunder by D/B Contractor is not intended to limit D/B Contractor's indemnification obligations under Section 23.

10.3.9 Commercial Unavailability of Required Coverages.

If, in the future, through no fault of D/B Contractor, any of the coverages required in this Section 10 (or any of the required terms of such coverages, including endorsements and/or policy limits) are not available or become in the future unavailable as determined under a commercial reasonableness standard, the Mobility Authority will work with D/B Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to the Mobility Authority and to the D/B Contractor. In the event any required coverage is not available and no reasonable alternative is acceptable, the Mobility Authority shall be entitled to a Change Order to reduce the Design/Build Price by the cost of any required insurance that is not obtained due to commercial unavailability.

10.4 Mobility Authority's Right to Remedy Breach by D/B Contractor.

If D/B Contractor or any Subcontractor fails to provide insurance as required herein, the Mobility Authority shall have the right, but not the obligation, to purchase such insurance. In such event, the amounts paid by the Mobility Authority shall, at the Mobility Authority's sole option, be deducted from amounts payable to D/B Contractor or reimbursed by D/B Contractor upon demand, with interest thereon at the maximum rate allowable under applicable Law from the date of payment by the Mobility Authority. Nothing herein shall preclude the Mobility Authority from exercising its rights and remedies under Section 17 as a result of the failure of D/B Contractor or any Subcontractor to satisfy the obligations of this Section 10.

10.5 Other Conditions.

10.5.1 Minimum Safety Compliance Requirements.

D/B Contractor shall be solely responsible for safety on the Site, and shall comply in all respects with the Safety Plan. Each Subcontractor, before performing any Design/Build Work, shall agree in writing to, and shall when performing any Design/Build Work, comply with the requirements of the Safety Plan. Any suspension of Design/Build Work by the Mobility Authority related to safety concerns, including the failure of any member of the D/B Contractor Group to comply with the Safety Plan, shall be considered a suspension for cause under Section 15.2.

10.5.2 Due Care Required.

Nothing contained in this Section 10 shall relieve D/B Contractor or any Subcontractors of its obligation to exercise due care in the performance of the Design/Build Work and to complete the Design/Build Work in strict compliance with this D/B Contract.

10.6 Prosecution of Claims.

Unless otherwise directed by the Mobility Authority in writing, D/B Contractor shall report and process all potential claims by the Mobility Authority or D/B Contractor against the insurance required to be provided hereunder. D/B Contractor agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the Mobility Authority, whether for defense or indemnity or both. The Mobility Authority agrees to notify D/B Contractor of the Mobility Authority's incidents, potential claims, and matters which may give rise to an insurance claim by the Mobility Authority, to tender its defense or the claim to D/B Contractor, and to reasonably cooperate with D/B Contractor for D/B Contractor to fulfill its duties hereunder.

10.7 Commencement of Design/Build Work.

D/B Contractor shall not commence Design/Build Work under this D/B Contract until it has obtained the applicable insurance required under this Section 10 and such insurance has been approved by the Mobility Authority. D/B Contractor shall not allow any Subcontractor to commence work under its Subcontract until the insurance required of the Subcontractor has been obtained and approved by D/B Contractor. If the insurance provided by D/B Contractor fails to comply with the requirements listed herein, or if D/B Contractor fails to maintain such insurance, then the Mobility Authority maintains the right to suspend D/B Contractor's right to proceed until the Mobility Authority receives satisfactory evidence that the required insurance coverage has been procured in accordance with the terms hereof.

10.8 Disclaimer.

D/B Contractor and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

10.9 Insurance During Warranty Period.

During the period following Final Acceptance and prior to expiration of D/B Contractor's Warranty, D/B Contractor shall make available all insurance as specified in Section 10.2, excluding builder's risk coverage, which coverage shall be reinstated by the D/B Contractor in the event of, and prior to the commencement of any required Warranty Work by D/B Contractor.

Amendment No. 1

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

RESOLUTION NO. 17-049

**APPROVE CHANGE ORDER NO. 10 TO THE COLORADO RIVER CONSTRUCTORS
CONTRACT AND AN ASSOCIATED AMENDMENT TO THE INTERLOCAL
AGREEMENT WITH THE CITY OF AUSTIN FOR CITY OF AUSTIN WASTEWATER
BETTERMENTS ON THE 183 SOUTH PROJECT**

WHEREAS, by Resolution No. 15-049, dated July 29, 2015, the Board of Directors authorized the Executive Director to execute a design-build contract with Colorado River Constructors for design and construction of the Bergstrom (183 South) Expressway Project (“Project”); and

WHEREAS, under the terms of the design-build contract, Colorado River Constructors is bound to adjust and relocate utilities that are within the jurisdiction of the City of Austin, including betterments as requested by the City of Austin; and

WHEREAS, by Resolution No. 16-018, dated March 30, 2016, the Board of Directors authorized the Executive Director to execute an Interlocal agreement with the City of Austin, identifying roles and responsibilities of the parties involved, including payment obligations for utility betterments requested by the City of Austin; and

WHEREAS, the City of Austin has requested certain wastewater betterments at Little Walnut Creek which are not currently addressed in the Interlocal Agreement; and

WHEREAS, the Executive Director is working with the City of Austin to amend the Interlocal Agreement to require the City of Austin to pay for costs associated with the design and construction of the requested wastewater betterments, and

WHEREAS, the Executive Director and Colorado River Constructors have negotiated Change Order No. 10 to the design-build contract in the amount of \$1,009,999.64 to incorporate the design and construction of the wastewater betterments at Little Walnut Creek requested by the City of Austin into the Project, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Executive Director recommends approval of proposed Change Order No. 10 to the design-build contract with Colorado River Constructors in the amount of \$1,009,999.64, contingent upon execution of an amendment to the Interlocal Agreement to require the City of Austin to provide the funding for Change Order No. 10.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors authorizes and directs the Executive Director to negotiate and execute an amendment to the Interlocal Agreement with the City of Austin to incorporate and provide funding for the City of Austin’s requested wastewater betterments and Little Walnut Creek; and

BE IT FURTHER RESOLVED that, contingent upon the execution of an amendment to the Interlocal Agreement requiring the City of Austin to provide funding for Change Order No. 10, the Board of Directors authorizes the Executive Director to finalize and execute proposed Change Order No. 10 to the design-build contract with Colorado River Constructors in the amount of \$1,009,999.64 and in the form or substantially the same form as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 6th day of September 2017.

Submitted and reviewed by:



Geoffrey Petrov, General Counsel

Approved:



Ray A. Wilkerson
Chairman, Board of Directors

Exhibit A

FIRST AMENDMENT TO INTERLOCAL AGREEMENT FOR THE ADJUSTMENTS OF CITY OF AUSTIN WATER AND WASTEWATER SYSTEM UTILITY IN CONNECTION WITH THE BERGSTROM EXPRESSWAY (183) PROJECT

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT (“First Amendment”) is made and entered into by and between the **City of Austin**, a Texas home-rule city (“**City**”) and the **Central Texas Regional Mobility Authority** (“**Mobility Authority**”).

**I.
RECITALS:**

1.01. WHEREAS, the City and the Mobility Authority executed an Interlocal Agreement for relocation of City of Austin Water and Wastewater Utilities in Connection with the Bergstrom Expressway (183 South) Project (“Interlocal Agreement”) that set forth agreed terms for the design and construction of certain utility relocations that were determined to be necessary to allow the Mobility Authority to construct improvements associated with the 183 South Project.

1.02 WHEREAS, the City Council previously authorized the negotiation and execution of an Interlocal Agreement with the Central Texas Regional Mobility Authority for the relocation of water and wastewater utilities including betterments up to an amount of \$7,728,157.

1.03 WHEREAS, the Interlocal Agreement currently provides for a net lump sum payment to the Mobility Authority of \$6,717,549, with \$1,010,608 in contingency.

1.04. WHEREAS, the City is requesting additional Betterments be installed by the Mobility Authority in association with the Project including upgrades and new infrastructure at an additional Lump Sum cost of \$1,009,999.64 and accordingly the cost for the additional Betterments and upgrades are within the LS limits that Council originally authorized.

1.05. WHEREAS, the City and the Mobility Authority now desire to enter into this First Amendment to include additional Betterments and increase the payment to the Mobility Authority for the additional Betterments.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and covenants set forth below, the City and the Mobility Authority, hereby amend the Interlocal Agreement as follows:

**II.
AMENDMENTS**

2.01. From and after the date of this First Amendment, all references in the 183 South project to the “Interlocal Agreement” shall mean and refer to the Interlocal Agreement for the Adjustments of City of Austin Water and Wastewater System Utilities in Connection with the Bergstrom Expressway (183 South) Project as amended by this First Amendment.

2.02 Exhibit "A" to the Interlocal Agreement - Funding and Contributions is hereby replaced by the new **Exhibit "A" entitled "Amended Funding and Contributions"** to reflect the costs for additional Betterments and City's total pay-out to Mobility Authority for additional Betterments, which new Exhibit A is attached hereto.

2.03. A new Exhibit "E" entitled List of Additional Betterments in the form attached to this First Amendment, is hereby added as an additional Exhibit to the Interlocal Agreement.

**III.
GENERAL CONDITIONS**

3.01. Effect of First Amendment. The terms and conditions of the Interlocal Agreement are incorporated by reference for all purposes. Except as specifically amended and modified by this First Amendment, the parties hereby agree that the terms and conditions of the Interlocal Agreement remain in full force and effect as written.

3.02. Duplicate Originals. This First Amendment may be executed in duplicate originals, each of equal dignity.

3.03. Effective Date. This First Amendment will be effective from and after the date of execution by the City and the Mobility Authority.

IN WITNESS WHEREOF, the authorized representatives of the City and the Mobility Authority, have executed this First Amendment, as of the date(s) indicated below.

[Signature Pages to Follow]

Approved as to form:

CITY OF AUSTIN:

Maria Sanchez
Maria Sanchez
Assistant City Attorney

By: Robert Goode
Robert Goode
Assistant City Manager

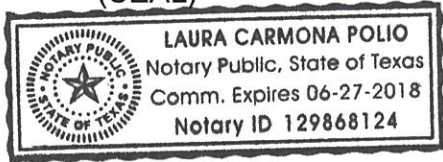
THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

THIS INSTRUMENT was acknowledged before me on this 29th day of August, 2017, by Robert Goode, Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.

(SEAL)



Laura Carmona Polio
Notary Public, State of Texas

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: Mike Heiligenstein

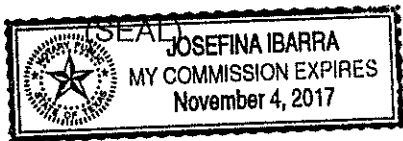
Name: Mike Heiligenstein

Title: Executive Director

THE STATE OF Texas §

COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this 7th day of September, 2017, by Mike Heiligenstein, Executive Director on behalf of Central Texas Regional Mobility Authority.



[Signature]
Notary Public, State of Texas

EXHIBIT "A" - Amended Funding and Contributions

	<u>CITY to CTRMA</u>	<u>CTRMA to CITY</u>
NEGOTIATED LUMP SUM COSTS FOR BETTERMENTS		
Construction Costs for Betterments	\$ 9,705,504.02	
Easements Costs for Betterments	\$ 400,580.76	
Subtotal:	<u>\$ 10,106,084.78</u>	
PREVIOUSLY EXPENDED INDIRECT COSTS FOR CITY RELATED TO UTILITY RELOCATIONS		
Engineering/PM/Easement Acq./AWU Design Review/Coordination with CTRMA and DB Contractor		\$ 1,989,393.75
Credit Adjustment for New Infrastructure against Proposed Indirect Costs - 25%		<u>\$ (497,348.44)</u>
Subtotal:		<u>\$ 1,492,045.31</u>
PROPOSED LUMP SUM INDIRECT COSTS FOR CITY RELATED TO UTILITY RELOCATIONS		
Design Reviews and Engineering/Field Support/Administrative (Austin Water Utility, Public Works)		\$ 529,974.00
Easement Acquisition (Office of Real Estate)		\$ 189,760.00
Construction Inspection (Public Works)		<u>\$ 904,040.00</u>
		\$ 1,623,774.00
Credit Adjustment for New Infrastructure against Proposed Indirect Costs - 25%		<u>\$ (405,943.50)</u>
Subtotal:		<u>\$ 1,217,830.50</u>
Project Management (Public Works)		<u>\$ 446,160.00</u>
Subtotal:		<u>\$ 446,160.00</u>
PROPOSED LUMP SUM INDIRECT COSTS FOR PERMITTING		
Permitting Assistance		
(Development Services Department)		\$ 260,000.00
(Austin Transportation Department)		<u>\$ 50,000.00</u>
		\$ 310,000.00
Credit Adjustment for New Infrastructure against Proposed Indirect Costs - 25%		<u>\$ (77,500.00)</u>
Subtotal:		<u>\$ 232,500.00</u>
Total:	<u>\$ 10,106,084.78</u>	<u>\$ 3,388,535.81</u>
City of Austin Cost Responsibility for Betterments		\$ 10,106,084.78
CTRMA Cost Responsibility for City indirect costs related to Non-Betterment Relocations		<u>\$ (3,388,535.81)</u>
Initial Pay-out to CTRMA for Project Utility Relocations		<u>\$ 6,717,548.97</u>
Additional Betterments added in ILA Amendment 1 (Exhibit E)		<u>\$ 1,009,999.64</u>
Total Pay-out to CTRMA for Project Utility Relocations		<u>\$ 7,727,548.61</u>

EXHIBIT "E" - List of Additional Betterments

<u>CITY OF AUSTIN REQUESTED BETTEREMENTS</u>	<u>Amount</u>
Proposed 72" wastewater line highway crossing to replace existing 60-inch and 42-inch wastewater lines	\$ 1,009,999.64
Total Cost of Requested Betterments payable to CTRMA	\$ 1,009,999.64

Amendment No. 2

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

RESOLUTION NO. 19-044

**APPROVING AMENDMENT NO. 2 TO THE INTERLOCAL AGREEMENT
WITH THE CITY OF AUSTIN FOR UTILITY BETTERMENTS ON THE
BERGSTROM EXPRESSWAY (183 SOUTH) PROJECT**

WHEREAS, by Resolution No. 15-049, dated July 29, 2015, the Board of Directors authorized the Executive Director to execute a design-build contract with Colorado River Constructors for design and construction of the Bergstrom (183 South) Expressway Project ("Project"); and

WHEREAS, under the terms of the design-build contract, Colorado River Constructors is bound to adjust and relocate utilities that are within the jurisdiction of the City of Austin, including betterments as requested by the City of Austin; and

WHEREAS, by Resolution No. 16-018, dated March 30, 2016, the Board of Directors authorized the Executive Director to execute an Interlocal agreement with the City of Austin, identifying roles and responsibilities of the parties involved, including payment obligations for utility betterments requested by the City of Austin; and

WHEREAS, by Resolution No. 17-049, dated September 6, 2017, the Board of Directors authorized and directed the Executive Director to negotiate and execute Amendment No. 1 to the Interlocal Agreement with the City of Austin to incorporate and provide funding for the City of Austin's requested wastewater betterments and Little Walnut Creek; and

WHEREAS, the City of Austin has requested additional betterments, including upgrades and new infrastructure not included in the Interlocal Agreement or Amendment No. 1; and

WHEREAS, the Executive Director and the City of Austin have negotiated Amendment No. 2 to the Interlocal Agreement to include an additional lump sum payment from the City of Austin in the amount of \$206,167.22 for the additional betterments to be installed by the Mobility Authority, which is attached hereto as Exhibit A; and

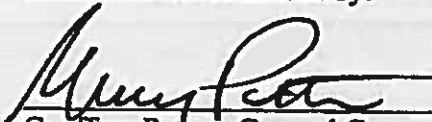
WHEREAS, the Executive Director recommends approval of proposed Amendment No. 2 to the Interlocal Agreement with the City of Austin in the form or substantially the same form as is attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves Amendment No. 2 to the Interlocal Agreement with the City of Austin for utility betterments on the Bergstrom (183 South) Expressway Project; and

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to finalize and execute Amendment No. 2 to the Interlocal Agreement with the City of Austin in the form or substantially the same form as is attached hereto as Exhibit A.

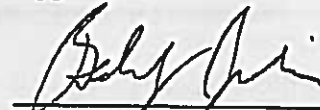
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 11th day of September 2019.

Submitted and reviewed by:



Geoffrey Petrov, General Counsel

Approved:



Bobby Jenkins
Chairman, Board of Directors

EXHIBIT "A1" - Amended Funding and Contributions

	<u>CITY to CTRMA</u>	<u>CTRMA to CITY</u>
NEGOTIATED LUMP SUM COSTS FOR BETTERMENTS		
Construction Costs for Betterments	\$ 9,705,504.02	
Easements Costs for Betterments	\$ 400,580.76	
Subtotal:	<u>\$ 10,106,084.78</u>	
PREVIOUSLY EXPENDED INDIRECT COSTS FOR CITY RELATED TO UTILITY RELOCATIONS		
Engineering/PM/Easement Acq./AWU Design Review/Coordination with CTRMA and DB Contractor		\$ 1,989,393.75
Credit Adjustment for New Infrastructure against Proposed Indirect Costs - 25%		\$ (497,348.44)
Subtotal:		<u>\$ 1,492,045.31</u>
PROPOSED LUMP SUM INDIRECT COSTS FOR CITY RELATED TO UTILITY RELOCATIONS		
Design Reviews and Engineering/Field Support/Administrative (Austin Water Utility, Public Works)		\$ 529,974.00
Easement Acquisition (Office of Real Estate)		\$ 189,760.00
Construction Inspection (Public Works)		\$ 904,040.00
		<u>\$ 1,623,774.00</u>
Credit Adjustment for New Infrastructure against Proposed Indirect Costs - 25%		\$ (405,943.50)
Subtotal:		<u>\$ 1,217,830.50</u>
Project Management (Public Works)		\$ 446,160.00
Subtotal:		<u>\$ 446,160.00</u>
PROPOSED LUMP SUM INDIRECT COSTS FOR PERMITTING		
Permitting Assistance		
(Development Services Department)		\$ 260,000.00
(Austin Transportation Department)		\$ 50,000.00
		<u>\$ 310,000.00</u>
Credit Adjustment for New Infrastructure against Proposed Indirect Costs - 25%		\$ (77,500.00)
Subtotal:		<u>\$ 232,500.00</u>
Total:	<u>\$ 10,106,084.78</u>	<u>\$ 3,388,535.81</u>
City of Austin Cost Responsibility for Betterments		\$ 10,106,084.78
CTRMA Cost Responsibility for City Indirect costs related to Non-Betterment Relocations		<u>\$ (3,388,535.81)</u>
Initial Pay-out to CTRMA for Project Utility Relocations		\$ 6,717,548.97
Additional Betterments added in ILA Amendment 1		\$ 1,009,999.64
Additional Betterments added in ILA Amendment 2 (Exhibit E)		\$ 206,167.22
Total Pay-out to CTRMA for Project Utility Relocations		<u>\$ 7,933,715.83</u>

EXHIBIT "E1" - List of Additional Betterments

CITY OF AUSTIN REQUESTED BETTERMENTS

	Amount
Pressure Point #23	\$ 84,547.00
New 24" Gate Valve	\$ 40,767.04
Upsize WL 41-1 from 8" to 12"	\$ 14,370.84
NXP Water Connection Improvements	\$ 66,482.34
Total Cost of Requested Betterments payable to CTRMA	\$ 206,167.22

SECOND AMENDMENT TO INTERLOCAL AGREEMENT FOR THE ADJUSTMENTS OF CITY OF AUSTIN WATER AND WASTEWATER SYSTEM UTILITY IN CONNECTION WITH THE BERGSTROM EXPRESSWAY (183) PROJECT

THIS SECOND AMENDMENT TO INTERLOCAL AGREEMENT (the "Second Amendment") is made and entered into by and between the City of Austin, a Texas home-rule city (the "City") and the Central Texas Regional Mobility Authority (the "Mobility Authority" and together with the City the "Parties")

I.
RECITALS:

1. WHEREAS, on December 17, 2015, the City Council for the City of Austin (the "Council") authorized the negotiation and execution of an interlocal agreement with the Mobility Authority for the relocation and improvement of water and wastewater utilities related to the Mobility Authority's Bergstrom Expressway (183 South) project (the "Relocation and Improvements") for the amount of \$6,717,549 plus a contingency amount of \$1,010,608, for a total agreement amount not to exceed \$7,728,157.

2. WHEREAS, on July 1, 2016, the Parties executed an interlocal agreement (the "Interlocal Agreement") that set forth agreed terms for the design and construction of the Relocation and Improvements.

3. WHEREAS, on September 7, 2017, the Parties executed a first amendment to the Interlocal Agreement (the "First Amendment") related to additional betterments requested by the City to include an additional lump sum payment to the Mobility Authority of \$1,009,999.64, an amount authorized by the Council's November 19, 2015, action authorizing the negotiation and execution the Interlocal Agreement.

4. WHEREAS, on November 9, 2017, the Council authorized the negotiation and execution of a second amendment to the Interlocal Agreement to increase the project amount by \$650,031.78 and add an additional contingency amount of \$537,806.22 for a total contract amount not to exceed \$8,915,995.

5. WHEREAS, the City is requesting that additional betterments be installed by the Mobility Authority including upgrades and new infrastructure (the "Additional Betterments").

6. WHEREAS, the City and the Mobility Authority now desire to enter into this Second Amendment to include the Additional Betterments and increase the lump sum payment to the Mobility Authority by \$206,168.

7. WHEREAS, payment for the Additional Betterments is authorized by the Council's November 9, 2017, action related to the authorization and negotiation of a second amendment to the Interlocal Agreement.

8. NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements and covenants set forth below, the Parties hereby amend the Interlocal Agreement as follows:

II.
AMENDMENTS

1. From and after the Effective Date of this Second Amendment, all references in the 183 South project to the "Interlocal Agreement" shall mean and refer to the Interlocal Agreement for the Adjustments of City of Austin Water and Wastewater System Utilities in Connection with the Bergstrom Expressway (183 South) Project as amended by the First Amendment and this Second Amendment.

2. Exhibit "A" to the Interlocal Agreement entitled Funding and Contributions is hereby amended by the new Exhibit "A1" entitled "Amended Funding and Contributions" in the form attached to this Second Amendment. From and after the Effective Date of this Second Amendment, all references in the Interlocal Agreement to Exhibit A shall mean and refer to Exhibit A as amended by Exhibit A1.

3. A new Exhibit "E1" entitled List of Additional Betterments, in the form attached to this Second Amendment, is hereby added as an additional exhibit to the Interlocal Agreement.

III.
GENERAL CONDITIONS

1. The terms and conditions of the Interlocal Agreement are incorporated by reference for all purposes. Except as specifically amended and modified by the First Amendment and this Second Amendment, the parties hereby agree that the terms and conditions of the Interlocal Agreement remain in full force and effect as written.

2. This Second Amendment may be executed in duplicate originals, each of equal dignity.

3. This Second Amendment becomes effective from and after the date when it is signed by the last party whose signing makes this Second Amendment fully executed (the "Effective Date").

[The remainder of this page is intentionally blank. The signature page follows]

IN WITNESS WHEREOF, the authorized representatives of the City and the Mobility Authority, have executed this Second Amendment, as of the date(s) indicated below.

Approved as to form: CITY OF AUSTIN:

By: [Signature]
Name: JOAN CRIBAN

By: [Signature]
Name: Gina W. Fiandaca

Title: Assistant City Attorney

Title: Assistant City Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this 18 day of December, 2019, by Gina Fiandaca, Assistant City Manager of the City of Austin, Texas, a municipal corporation, on behalf of said municipal corporation.



[Signature]
Notary Public, State of Texas

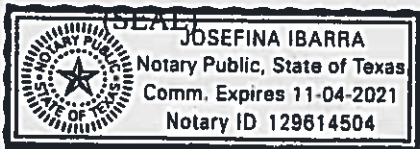
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: [Signature]
Name: Mike Heiligenstein

Title: Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me on this 26th day of September, 2019, by Mike Heiligenstein, Executive Director on behalf of Central Texas Regional Mobility Authority.



[Signature]
Notary Public, State of Texas