

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

RESOLUTION NO. 04-29

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, the US 183-A turnpike project was designated in the petition filed with TxDOT as the initial project to be developed by the CTRMA; and

WHEREAS, Williamson County (the "County") has committed to acquire a significant portion of the right-of-way ("ROW") for US 183-A; and

WHEREAS, a portion of that ROW is located within, and owned by, the City of Cedar Park ("City"); and

WHEREAS, the City is willing to transfer certain ROW within the City limits to the County (for eventual transfer to the CTRMA) subject to various terms and conditions; and

WHEREAS, the terms and conditions also require certain actions on the part of the CTRMA; and

WHEREAS, the CTRMA Board of Directors, in Resolution No. 04-22, previously authorized the execution of a form of interlocal agreement with the City and the County related to ROW for US 183-A; and

WHEREAS, through subsequent discussions among the City, the County, and the CTRMA, various changes have been made to the form of interlocal agreement previously approved by the board; and

WHEREAS, the revised terms and conditions agreed to among the County, the City, and the CTRMA are set forth in the interlocal agreement attached hereto as Attachment "A";


NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby approves the entry into the interlocal agreement attached hereto as Attachment "A", or an agreement in substantially similar form, providing for the transfer of ROW related to US 183-A and the performance of certain obligations by the CTRMA; and

BE IT FURTHER RESOLVED, that the Chairman be authorized to execute such interlocal agreement, in the form attached hereto as Attachment "A", on behalf of the CTRMA; and

BE IT FURTHER RESOLVED, that any further revisions to Attachment "A" be reviewed and approved by the Executive Committee prior to execution on behalf of the CTRMA.

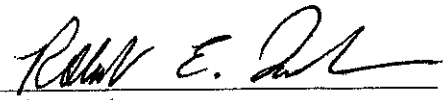
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of June, 2004.

Submitted and reviewed by:



C. Brian Cassidy
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Bob Tesch
Chairman, Board of Directors
Resolution Number 04-29
Date Passed 6/30/04

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is made and entered into and effective this _____ day of June, 2004, by and between the CITY OF CEDAR PARK, TEXAS ("City"), a home rule municipal corporation of the State of Texas, WILLIAMSON COUNTY ("County"), a political subdivision of the State of Texas and the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY, a political subdivision of the State of Texas (the "CTRMA").

RECITALS

WHEREAS, the Texas Interlocal Cooperation Act allows public agencies to contract with one another to perform governmental functions and services;

WHEREAS, the City, the County and the CTRMA mutually desire to be subject to the provisions of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, specifically §791.011 regarding contracts to perform governmental functions and services;

WHEREAS, the City and the County desire to co-operate with the CTRMA to facilitate the construction of the proposed US Highway 183A turnpike project ("US 183A");

WHEREAS, the City has, throughout the years, acquired several tracts of land within the proposed alignment of US 183A, such tract being described via metes and bounds on Exhibit A attached hereto ("Right-of-Way Property");

WHEREAS, the County has assumed the responsibility of acquiring other portions of the right-of-way necessary for the construction of US 183A;

WHEREAS, the City now desires to transfer the Right-of-Way Property to the County for eventual transfer to the CTRMA conditioned upon compliance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. The City agrees to transfer to the County the Right-of-Way Property described in Exhibit A, attached hereto and incorporated herein, subject to the conditions listed in this Agreement.
2. The County agrees to acquire all additional right-of-way within Cedar Park's corporate limits and extraterritorial jurisdiction necessary for the construction of US 183A, and to transfer such Right-of-Way Property to the CTRMA for the development of US 183A.

3. The parties agree that the document transferring the Right-of-Way Property from the City to the County shall include reversionary language stating that the Right-of-way Property shall revert to the City if the construction of the main lanes (excluding frontage roads) between FM 1431 south to Avery Ranch Boulevard is not commenced within three (3) years after execution of this Agreement. "Commenced" shall mean that a contract has been awarded for the construction of said main lanes (excluding frontage roads) from FM 1431 south to Avery Ranch Boulevard.

4. The County and the CTRMA further agree that the Right-of-Way Property shall revert to the City if, on or before the earlier of (a) the opening date for commercial operation of the proposed Multi-Purpose Event Center (MPEC) to be located at the southwest quadrant of proposed US 183A and FM 1431, or, (b) October 1, 2006, but in no event earlier than November 1, 2005 (the "Completion Deadline"), the CTRMA has not either:
 - (i) designed, constructed and achieved "substantial completion", at its sole cost and expense, of the western frontage road of US 183A between FM 1431 and the existing location of New Hope Road as of the effective date of this Agreement (the "Existing New Hope Road Location"), such western frontage road to be designed with three (3) lanes and opened to two-way traffic, or

 - (ii) designed, constructed and achieved "substantial completion", at its sole cost and expense, of two (2) lane eastern and western frontage roads of US 183A between FM 1431 and the Existing New Hope Road Location, such frontage roads to be connected with "Texas U-Turns" located near the intersection of US 183A and FM 1431 and US 183A and the future New Hope Road location as generally depicted in Exhibit B.

The foregoing obligation of the CTRMA is contingent upon the City acquiring and conveying to the County the right-of-way necessary for the western frontage road by October 1, 2004 (the "Western Frontage Road ROW Deadline"). In the event that the City does not timely acquire such right-of-way, the Completion Deadline shall be extended by the same number of days that the City exceeds the Western Frontage Road ROW Deadline. The County shall acquire the necessary right-of way for the eastern frontage roads and the Texas U-Turns at its expense and shall convey such right-of-way (and the western frontage road right-of-way) to the CTRMA. For purposes of this Agreement, "substantial completion" shall mean that the roadway is open to the public. Notwithstanding the foregoing, non-performance or delayed performance of the CTRMA's obligation shall be suspended upon the occurrence of an event of *Force Majeure*, provided that the CTRMA shall use its best efforts to give the City written notice of the event of *Force Majeure* within ten (10) business days of the occurrence thereof. Upon the occurrence of an event of *Force Majeure*, the Completion Deadline shall be

extended day-for-day for the duration of the event for a maximum of 730 days, after which this Agreement shall terminate and the Right-of-Way Property shall revert to the City unless otherwise agreed to by the parties. For purposes of this Agreement, "*Force Majeure*" means an act of terror committed within the United States of America that materially impairs the CTRMA's business operations; a prolonged and unforeseen strike, riot, or occurrence of civil disobedience that materially impairs the CTRMA's business operations; a prolonged and unforeseen shortage of fuel, labor, or material; delay related to or caused by a severe weather event, such as a tornado, a hurricane, or flooding; interruption of utilities; fire or other casualty; discovery of karst features and/or threatened or endangered species previously unknown to the CTRMA; or any other act of God beyond the CTRMA's reasonable control, which could not be avoided by the exercise of due care.

5. Contingent upon receiving title to the Right-of-Way Property, the CTRMA agrees to design and construct (or to cause to be constructed) the intersection of FM 1431 and US 183A to provide a grade-separated interconnectivity between FM 1431 and US 183A and access from all four quadrants of said intersection.
6. The City shall be responsible for all maintenance and operation obligations for the eastern and western frontage roads south of New Hope and within Cedar Park's corporate limits, provided that the City shall not grant or approve access points to the frontage roads in the "Control of Access" areas depicted on Exhibit B, and in the event ramp locations for US 183A depicted on Exhibit B are moved prior to the design and construction of US 183A, the City shall not grant access points within areas reasonably designated by the CTRMA as "Control of Access" areas. Nothing herein shall preclude the CTRMA from expanding either or both of the frontage roads if necessary, in the CTRMA's sole discretion, to accommodate traffic volumes or to improve safety.
7. In connection with the design and construction of US 183A and as an express condition of the City's transfer of the Right-of-Way Property, the CTRMA shall ensure that the City and its personnel and designees have reasonable, uninterrupted and non-tolled access to and from the City's existing wastewater reclamation plant and field operations south of Brushy Creek Road via Brushy Creek or Kent Lane as set forth on Exhibit C. However, the CTRMA shall be bear reasonable costs of upgrading Kent Lane if the CTRMA denies the City access via Brushy Creek Road.
8. The CTRMA shall use reasonable efforts to minimize the extent of required utility relocations within the Right-of-Way Property and all other US 183A Right of Way throughout the City so as to avoid unnecessary utility relocation costs. As of the execution hereof, the CTRMA anticipates that only the utility relocations described on Exhibit D shall be necessary to accommodate construction of US 183A. The City shall use reasonable efforts to pursue its rights, if any, or to

assign to the CTRMA its rights, if any, and if assignable, under the City's existing utility franchise agreements, to cause necessary relocations within the Right-of-Way Property to be accomplished as expeditiously as possible and at the cost of the City's franchisees. Such rights, if any, will be strictly limited to facilitating utility relocation. The City and the CTRMA shall coordinate their respective efforts and work in good faith to pursue cooperative and cost-effective utility relocations. However, in no event shall the City incur or be responsible for utility relocation expenses in excess of \$200,000.00. Utility relocation expenses in excess of \$200,000.00 shall be the sole responsibility of the CTRMA. All City utilities, whether or not relocated, shall be allowed to remain in the US 183A Right of Way at no cost to the City. Subject to CTRMA's approval, any utilities may traverse the 183A Right of Way. Such approval shall not be unreasonably withheld.

9. Subject to the CTRMA's receipt of the Right-of-Way Property, the CTRMA shall design and construct (or cause to be constructed) a US 183A bridge over south Brushy Creek to accommodate the City's future extension of Little Elm Trail under the main lanes of US 183A.
10. A party may terminate the Agreement for breach of any provision of this Agreement after providing written notice of the alleged breach to the other parties and giving the party allegedly in breach not less than thirty (30) days to cure the alleged breach.
11. All notices, demands and requests, including invoices which may be given or which are required to be given by a party to the other parties, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when: (i) personally delivered to the intended recipient; (ii) three (3) days after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) delivered in person to the address set forth below for the party to whom the notice was given; (iv) deposited into the custody of a recognized overnight delivery service such as Federal Express Corporation, Emery, or Lone Star Overnight, addressed to the parties at the addresses specified below; or (v) sent by facsimile, telegram or telex, provided that receipt for such facsimile, telegram or telex is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. For purposes of this Section, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

City of Cedar Park
Attn: City Manager
600 N. Bell Blvd
Cedar Park, Texas 78613
Phone: (512) 258-4121
Fax: (512) 258-6083

Williamson County
Attn: John Doerfler, County Judge
710 Main Street, Suite 201
Georgetown, Texas 78626
Phone: (512) 943-1577
Fax: (512) 943-1662

Central Texas Regional Mobility Authority
Attn: Mike Heiligenstein, Executive Director
13640 Briarwick Drive, Suite 200
Austin, TX 78729
Phone: (512) 996-9778
Fax: (512) 996-9784

12. MISCELLANEOUS

12.1 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matter contained herein. The parties may not modify or amend this Agreement, except by written agreement approved by the governing bodies of each party and duly executed by both parties.

12.2 Approval. This Agreement has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.

12.3 Assignment. Except as otherwise provided in this Agreement, a party may not assign this Agreement or subcontract the performance of services without first obtaining the written consent of the other party. Notwithstanding the foregoing, nothing in this Agreement shall preclude the CTRMA from contracting with third parties, through a comprehensive development agreement or other public-private partnership arrangement, for the development of US 183A in a manner which includes construction of items described as CTRMA obligations in this Agreement.

12.4 Non-Waiver. A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this Agreement does not preclude the exercise of another right or remedy. Rights and remedies under this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

12.5 Paragraph Headings. The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any section thereof.

12.6 Attorneys' Fees. In any lawsuit concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees from the nonprevailing party, plus reasonable expenses.

12.7 Severability. The parties agree that in the event any provision of this Agreement is declared invalid by a court of competent jurisdiction that part of the Agreement is severable and the decree shall not affect the remainder of the Agreement. The remainder of the Agreement shall be in full force and effect.

12.8 Venue. The parties agree that all disputes that arise out of this Agreement are governed by the laws of the State of Texas and venue for all purposes herewith shall be in Williamson County, Texas.

CITY OF CEDAR PARK, TEXAS

By: _____
Bob Young, Mayor

WILLIAMSON COUNTY

By: _____
John Doerfler, County Judge

CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

By: _____
Robert E. Tesch, Chairman
CTRMA Board of Directors