



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #5 SUMMARY

Authorize procurement of a construction contract for the Maha Loop/Elroy Road project.

Strategic Plan Relevance:	Regional Mobility
Department:	Engineering
Associated Costs:	\$13,713,600 (Construction only)
Funding Source:	Travis County
Board Action Required:	Yes

Description of Matter: The Board previously approved an interlocal cooperation agreement with Travis County for the Mobility Authority to design and construct a new county road in southeast Travis County. Staff requests Board approval to procure, consistent with the Mobility Authority Procurement Policy, a contract to construct that road, the Maha Loop/Elroy Road from Pearce Lane to SH 71.

Additional Board approvals will be requested at a later date related to bid award and contract execution for the Project.

The construction project consists of a 3-lane section, one lane in each direction with a center turn lane that will allow contra flow. Design and construction of the road will be completed to ensure compatibility with future development (not part of this project or the interlocal cooperation agreement) of an ultimate 5-lane section.

Reference documentation:	Draft Resolution Executed Interlocal Cooperation Agreement
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Contact for further information: Wesley M. Burford, P.E., Director of Engineering

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

RESOLUTION NO. 14-___

**AUTHORIZE PROCUREMENT OF A CONSTRUCTION CONTRACT
FOR THE MAHA LOOP/ELROY ROAD PROJECT.**

WHEREAS, the Mobility Authority and Travis County have entered into an interlocal cooperation agreement (the “ILA”) under which the Mobility Authority will develop the Maha Loop/Elroy Road project, a new three lane rural arterial road extending south approximately 1.9 miles from SH 71 to Pearce Lane (the “Project”); and

WHEREAS, the Mobility Authority and its vendors have collaborated with Travis County pursuant to the ILA to design the Project and prepare a bid solicitation package to procure a construction contract for the Project; and

WHEREAS, the Executive Director recommends initiating a procurement process to solicit a construction contract for the Project.

NOW THEREFORE, BE IT RESOLVED, that the Executive Director is authorized and directed to procure a construction contract for the Maha Loop/Elroy Road project in accordance with the procurement policies established by Chapter 4 of the Mobility Authority Policy Code.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of March, 2014.

Submitted and reviewed by:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number 14-___
Date Passed 3/26/14

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is between Travis County, Texas (the "County") and the Central Texas Regional Mobility Authority (the "Authority"). The County and the Authority may be referred to collectively in this agreement as the "parties," and individually as a "party."

WHEREAS, the parties intend to participate and collaborate in the design and construction of new three lane rural arterial road consisting of two through lanes and a continuous center left-turn lane with a bike lane and a sidewalk on one side, extending south approximately 1.9 miles from SH 71 to Pearce Lane, as approved by motion of the Travis County Commissioners Court on September 24, 2013 (the "Project"); and

WHEREAS, the County has agreed to fund the direct and indirect costs of the Project as detailed in this agreement, and the Authority has agreed to manage the design, procurement, and construction of the Project as detailed in this agreement; and

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

NOW, THEREFORE, the parties agree as follows:

1. Financial Obligations.

(A) The County will provide funding for the Project at the Estimated Project Cost of Sixteen Million Six Hundred Five Thousand Two Hundred Twenty and 76/100 Dollars (\$16,605,220.76). The Authority's sole contribution to Project costs are certain in-kind services provided under this agreement.

(B) The Authority will develop a detailed "not-to exceed" Project budget, to include a cash disbursement projection (the "Budget"). The Budget will include the following costs to be paid by the Authority to outside consultants, vendors, and the successful bidder on the construction contract for the Project:

- (1) pre-development engineering;
- (2) preliminary engineering;
- (3) capital costs (design and construction);
- (4) engineering oversight (including design reviews, construction management, materials testing, inspection);
- (5) legal, administrative, and other fees and expenses related to this agreement, procurement, and Project development and oversight;
- (6) environmental approvals, if required;
- (7) public notices and involvement activities;
- (8) utility relocations;

- (9) contingencies, including change orders that may occur during the course of the Project and possible contractor claims at the end of the Project; and
- (10) all other costs reasonably projected as necessary to complete the Project, excluding the cost of a party's in-kind services provided through a party's employee.

(C) The Authority Representative and County Representative, as defined below, shall agree on the Budget, provided the County's Representative must obtain Commissioners Court approval if the Budget is to exceed the Estimated Project Cost, no later than five days after the parties have approved the Budget, as evidenced by a written notice of Budget approval signed by the County and Authority Representatives and delivered to the other party, the County shall pay to the Authority an initial payment of \$1,600,000 for use by the Authority to pay Project costs incurred during the early stages of the Project, such as engineering costs. All funds paid to the Authority by the County shall be deposited and held by the Authority in a separate, interest-bearing trust account for the payment of Project costs (the "Trust Account"). Interest earned on any accumulated cash balances in the Trust Account will be deposited monthly into the Trust Account and shall accrue to the benefit of the County. If the parties have not agreed on a Budget by November 27, 2013, either the County or the Authority may terminate this Agreement.

(D) After the Budget is approved, it may be revised by written agreement of the parties, provided the County Representative must obtain Commissioners Court approval if the Budget is to exceed the Estimated Project Cost. If the total cost of the Project is projected to exceed the Estimated Project Cost, the parties may engage in value engineering, down scoping, and/or phasing the improvements in an attempt to control costs. If the projected Project costs exceed funding available from the County from its own funds or from sources other than the Authority, the County may elect to provide the funds required to pay the additional Project costs. If the County fails to provide the funds required to pay excess Project costs, either party may terminate this agreement.

(E) The County may pay all or a portion of the Project costs using funds available from any source, including funds provided to the County by third parties other than the Authority. If the County cannot finance the Project costs on terms acceptable to the County, either party may terminate this agreement.

(F) Subsequent to the initial payment of \$1,600,000, the County will make additional payments to the Authority as needed based on the cash disbursement projection approved in the Budget. Authority may disburse funds from the Trust Account in accordance with the Budget to pay its outside contractors and to pay the contract price for construction of the Project to the bidder selected for the contract, including any change orders approved under this agreement. No later than two days after making any disbursement from the Trust Account, the Authority will provide to the County a copy of the disbursement, together with sufficient information to establish that the disbursement complies with this agreement.

(G) Authority shall not execute a construction contract for the Project or issue a notice to proceed under a construction contract until the County has secured and paid to the Authority all funds required by the Budget to fully fund the construction contract, related oversight and inspection costs, and the contingency fund established in the Budget.

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

(I) The Authority will notify the County in writing of any proposed change order and shall obtain written approval from the County before approving a change order. The County must provide its approval or disapproval no later than 4:00 p.m. on the second day after the County receives notice of a proposed change order. The County is deemed to have approved a change order, and the Authority is authorized to approve a change order, if the County does not disapprove a change order by the deadline established by this section. To assist with expediting change order approvals the County may assign sole approval authority for certain change orders to the Authority, to be mutually agreed upon prior to start of construction.

2. Project Development.

(A) County will timely acquire and make available to the Authority all right-of-way, licenses, easements of any nature and duration, and rights of possession ("Real Estate Interests") needed to complete the Project, as identified by the Authority upon completion of design work for the 50% design package. The County will provide any required surveying at its expense. County will obtain any additional Real Estate Interests needed for design changes or betterments to the Project requested and funded by the County. If the County cannot acquire the Real Estate Interests on terms acceptable to the County, either party may terminate this agreement. The Authority is authorized to enter or use all Real Estate Interests acquired by the County to complete the Project.

(B) The design, plans, and specifications for the Project shall comply with design and construction, materials testing, and inspection standards established or followed by the County, including but not limited to those for stormwater management, unless otherwise agreed by the parties (the "Standards").

(C) The Authority will manage the design and construction of the Project pursuant to the Standards, including (i) preliminary estimates, (ii) development of the engineering design, plans and specifications for all roadway improvements, (iii) surveying, (iv) construction, and (v) inspection and testing.

(D) When design work for each design package is 30% complete, and again when the design work for each design package is 90% and 100% complete, Authority shall submit the complete design package to the County. County will review and provide comments on the design package to the Authority. The parties will participate in joint monthly coordination and review meetings with representatives from all affected County reviewers to avoid or resolve conflicts in review comments. County agrees to complete its review and notify the Authority of its approval or disapproval of the design package no later than five days after receiving the design package. If County does not provide its approval or disapproval by the deadline, the County is deemed to have approved the design package. If County disapproves the information submitted, it shall at

the same time notify Authority of the reasons for its disapproval and actions necessary for the design package to meet County approval. Authority will have an opportunity to correct or submit additional information to cure any defects or deviations identified by County. Any defects or deviations will be discussed in an over-the-shoulder review meeting and incorporated into the next submittal.

(E) The Authority shall be responsible for producing the documents and analysis required for any required permitting and environmental assessments and clearances associated with the Project. The County shall apply for and obtain any permits and environmental assessments and clearance required for the Project issued by the County; and the Authority shall apply for and obtain any permits and environmental assessments and clearance issued by a federal, state, or local government agency other than the County.

(F) Authority agrees to develop and construct the Project on an expedited timetable in accordance with the Budget using resources and procurement methods available to and as determined by the Authority to be in the best interests of the Project.

(G) The Authority will ensure that the design engineer provides professional liability, automobile liability, and general liability insurance in accordance with the standard requirements of the County. Both the Authority and the County shall be named as an additional insureds with respect to such general liability and automobile liability coverage.

3. Project Bidding & Award of Construction Contract.

(A) The Authority will be responsible for the solicitation of bids for the construction of the Project based on the approved plans and specifications and in accordance with the Authority's bidding policies, laws, practices, and procedures. The Authority will notify the County of the lowest responsive and responsible bidder and the amount of the bid for the Project.

(B) Any construction contract executed by the Authority shall include, without limitation:

- (1) a deadline for substantial completion of the Project that is no later than March, 2015, unless otherwise agreed by the parties;
- (2) assessment of liquidated damages against the contractor for failing to meet that deadline, if the delay is not attributable to the Authority, the County, or a force majeure event;
- (3) provisions that establish the Authority's right to assign the construction contract to County upon the County's acceptance of the Project, together with a conveyance to the County of all contractor warranties, guarantees, and bonds;
- (4) a requirement the construction contractor will be responsible for any defects in workmanship or materials (ordinary wear and tear excepted) following acceptance and a one year warranty and maintenance bond in a form approved by the County; and
- (5) the HUB Program policies and the Minority and Woman-Owned Business goals adopted by the Travis County Commissioners Court.

(C) Authority will prepare all documents required to solicit bids for the construction contract, and will coordinate and collaborate with the County during that process. Prior to advertising the

Authority's solicitation of bids for the construction contract, the Authority shall obtain County approval of the final bid documents. If the County does not provide its approval or disapproval no later than 4:00 p.m. on the fifth day after the County receives the final bid documents, the County is deemed to have approved the contract.

(D) If no acceptable bid is low enough to allow the Project to be completed within the Budget, the County may require that the parties engage in value engineering, downscoping, and/or phasing the improvements in an attempt to reduce costs and then re-bid or make legally allowable adjustments to the bid. If new or adjusted bids are not low enough to allow the Project to be completed within the Budget, then either party may terminate this agreement.

4. Project Management.

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

(B) The County Executive for the Travis County Transportation and Natural Resources Department (the "County Representative") will act on behalf of the County with respect to the Project, coordinate with the Authority, receive and transmit information and instructions, and will have complete authority to interpret, define, and communicate to the Authority the County's policies, recommendations, and decisions with respect to the Project. By written notice delivered under this agreement, the County Representative may designate a County Project Manager and may designate other representatives to transmit instructions and act on behalf of the County with respect to the Project.

(C) A Travis County development permit is required for the Project. The County hereby (a) waives all County review, permit and inspection fees in connection with the Real Estate Improvements, (b) waives the requirement of §64.121(k)(2), Travis County Code, to obtain approval of a CLOMR prior to issuance of the permit.

(D) The County may observe or inspect all work done and materials furnished at reasonable times and places. If the County notifies the Authority that it believes the Project is not being constructed in accordance with applicable requirements or is otherwise materially defective, the parties shall promptly meet to discuss appropriate actions to ensure the construction contractor remedies any defect.

(E) The Authority shall notify the County in writing upon substantial completion of the Project. The County will conduct a final inspection of the Project within ten days after receiving the written notice of substantial completion. Upon the County's acceptance of the Project as substantially complete, the Authority will assign the construction contract to County, together with a conveyance to the County of all contractor warranties, guarantees, and bonds.

(F) No later than 30 days after final acceptance by the County, the Authority shall deliver to the County all plans including as built plans, specifications, and files pertaining to the Project, which materials will be the property of the County.

No later than 30 days after final acceptance by the County, the Authority shall render a final written accounting to the County of any and all costs paid, to be paid, credited, or refunded to or from the Trust Account established under this Agreement, taking into account any amount the County has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the Project. The County shall have the right to audit the Authority's records at its expense, and shall request any such audit, or any adjustments or corrections, no later than 30 days after its receipt of the accounting. After the Authority has sent any corrected or adjusted final accounting to the County, the County shall pay any amount it owes no later than 30 days after receipt of such final accounting. The Authority shall refund any amounts due the County no later than 20 days after delivery of the adjusted final accounting.

5. Dispute Resolution.

The Authority Representative and the County Representative will appoint, and convene as necessary or appropriate, a Leadership Team to serve in a management role and discuss issues that arise during the design, construction, and operation of the Project, including the resolution of major issues relating to the parties' responsibilities under this agreement. The Leadership Team will consist of two staff members each from the County and the Authority. Engineering consultants may not serve on the Leadership Team. The team will meet as necessary and serve in an advisory role to discuss:

- (1) procurement progress and related schedule impacts;
- (2) the County's participation in design and construction oversight; and
- (3) resolution of major issues relating to the parties' responsibilities under this agreement that may arise during the design, procurement, or construction of the Project.

Reasonable advance notice of the date, time, and place of each meeting of the Leadership Team will be provided to the Precinct Four Travis County Commissioner and to the Executive Director of the Authority, both of whom may attend the meeting in person or through a representative.

5. Default; Remedies; Termination.

(A) Either party may terminate this agreement if the other party defaults in its obligation and, after receiving notice of the default and of the non-defaulting party's intent to terminate, fails to cure the default no later than five days after receipt of that notice.

(B) This agreement will terminate on the date when the County has accepted the Project as substantially complete, this agreement and all other contracts, warranties, and bonds for the Project have been assigned to the County, and all Trust Account funds have been disbursed by the Authority in accordance with the terms of this agreement.

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

7. Miscellaneous.

(A) Force Majeure. Whenever a period of time is prescribed by this agreement for action to be taken by either party, the party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(B) Notice. All notices, demands or other requests, and other communications required or permitted under this agreement or which any party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving party, or (ii) or (ii) receipt of a facsimile or electronic mail transmission (the latter of scanned documents in formats such as .pdf or .tif) for which confirmation of receipt by the other party has been obtained by the sending party:

AUTHORITY: Wesley M. Burford, Director of Engineering
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, TX 78705
(512) 966-9784 (facsimile)
Email address: wburford@ctrma.org

WITH COPY TO: Andrew Martin, General Counsel
Central Texas Regional Mobility Authority
3300 N. IH-35, Suite 300
Austin, TX 78705
(512) 225-7788 (facsimile)
Email address: amartin@ctrma.org

COUNTY: Steve Manilla, County Executive
Travis County Transportation and Natural Resources Department
700 Lavaca Street, Suite 700
Austin, TX 78767-1748

(512) 854-4697 (facsimile)
Email address: steven.manilla@co.travis.tx.us

WITH A COPY TO: Tom Nuckols, Land Use Division Director
Travis County Attorney's Office
314 West 11th Street
Room 300
Austin, TX 78701
(512) 854-4808 (facsimile)
Email address: tom.nuckols@co.travis.tx.us

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

(D) Entire Agreement. This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties.

(E) Modification; Waiver. No amendment of this agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

(F) Effective Date. This agreement will become effective when signed by both the County and the Authority. The date of this agreement will be the date this agreement is signed by the last party to sign it, as indicated by the date associated with that party's signature.

(G) Counterparts. If the parties sign this agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.

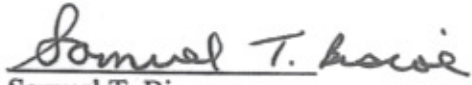
(H) Other Instruments. The parties shall execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this agreement.

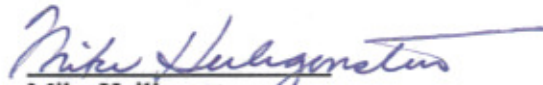
(I) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this agreement, but the effect thereof shall be confined to

the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

TRAVIS COUNTY

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**


Samuel T. Biscoe
County Judge
Date: 11-13-13


Mike Heiligensten
Executive Director
Date: 11-15-13