



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #6 SUMMARY

Authorize the Executive Director to issue certain directive letters to Central Texas Mobility Constructors under the design-build comprehensive development agreement for the Manor Expressway

Strategic Plan Relevance: Regional Mobility
Department: Engineering
Associated Costs: Not Applicable
Funding Source: Manor Expressway Project funds
Board Action Required: Yes

Description of Matter:

This item authorizes the Executive Director, with approval of the Executive Committee, to issue any Directive Letters, in an amount not to exceed \$5 million, under the design/build contract with Central Texas Mobility Constructors, LLC, for development of the Manor Expressway Project.

Because of the critical importance of completing the Manor Expressway Project on schedule, the Executive Director recommends that the Board authorize his approval to issue Directive Letters, in an amount not to exceed \$5 million, for certain change orders to Central Texas Mobility Constructors, LLC. The Executive Director shall promptly provide a written report to the members of the Board of Directors describing each such approved Directive Letter and his reason for issuing that Directive Letter.

Most change orders will continue to be scheduled for Board approval during a regular monthly meeting, but this power will allow the Executive Director to act on behalf of the Mobility Authority if circumstances require the issuance of a Directive Letter in the period between the Board's monthly meetings.

Reference documentation: Draft Resolution
Contract excerpt re Directive Letter
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-___

**AUTHORIZING THE EXECUTIVE DIRECTOR TO ISSUE CERTAIN
DIRECTIVE LETTERS TO CENTRAL TEXAS MOBILITY CONSTRUCTORS
UNDER THE DESIGN/BUILD COMPREHENSIVE DEVELOPMENT
AGREEMENT FOR THE MANOR EXPRESSWAY**

WHEREAS, Section 101.038(b)(7) of the Policy Code provides that the Executive Director “shall have such obligations and authority as may be described in one or more Resolutions enacted from time to time by the board;” and

WHEREAS, under Section 14.1.1.2 of the Design/Build Comprehensive Development Agreement with Central Texas Mobility Constructors, LLC, (“CTMC”) effective June 15, 2011 (the “Contract”), the Mobility Authority may issue a Directive Letter to CTMC to require immediate performance of Development Work by CTMC; and

WHEREAS, the Executive Director recommends that the Board authorize an expedited process to issue certain Directive Letters to CTMC when scheduling Board approval of the Directive Letter at a regular monthly meeting could cause a delay completing the Manor Expressway Project.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes the Executive Director, with approval of the Executive Committee, to issue to Central Texas Mobility Constructors, LLC, any Directive Letter for Development Work on the Manor Expressway Project when the estimated cost to the Mobility Authority of that Development Work is \$300,000 or more, but does not exceed \$5 million, without prior Board consideration or approval of the Directive Letter; and

BE IT FURTHER RESOLVED that the Executive Director shall promptly provide a written report to the members of the Board of Directors describing each such approved Directive Letter and his reason for issuing that Directive Letter.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of February, 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: 02/26/14

- (b) to revise the Interim Completion Deadline, the Completion Deadline or the Acceptance Deadline;
- (c) to revise the Development Price; and
- (d) to revise other terms and conditions of the Contract Documents.

Upon the CTRMA's approval of the matters set forth in the Change Order form, whether it is initiated by the CTRMA or D/B CDA Developer, the CTRMA shall execute such Change Order form.

14.1.1.2 Issuance of Directive Letter.

The CTRMA may, at any time, issue a letter to D/B CDA Developer in the event of any desired change in the Development Work or in the event of any dispute regarding the scope of the Development Work to be performed by D/B CDA Developer (a "**Directive Letter**"). The Directive Letter will describe the Development Work in question and will state the basis for determining compensation, if any. D/B CDA Developer will proceed immediately with the Development Work as directed in the Directive Letter, pending the execution of a formal Change Order or, if the Directive Letter states that the Development Work is within the original scope of the Development Work, D/B CDA Developer will proceed with the Development Work as directed, but shall have the right to submit the question of entitlement to a Change Order and the amount of allowable additional compensation and time to dispute resolution in accordance with Section 25 of this Agreement.

14.1.1.3 Prerequisites for Change Orders for Work Outside of Scope.

As a condition precedent to D/B CDA Developer's entitlement to a price increase or time extension for work which D/B CDA Developer believes is outside of the scope of the Development Work, D/B CDA Developer shall have received either a Directive Letter from the CTRMA stating that it is issued pursuant to Section 14.1.1.2 or a Change Order for such item signed by the CTRMA. D/B CDA Developer shall not be entitled to additional compensation or time extension for any such work performed prior to receipt of a Directive Letter or Change Order, except to the extent that Section 14.3.2.2 preserves D/B CDA Developer's right to compensation for work performed following delivery of a Request for Change Order Resolution Meeting. D/B CDA Developer acknowledges that it will be at risk if it elects to proceed with any such work, since CTRMA may later decide not to provide direction with regard to such work.

14.1.1.4 **Additional Provisions Concerning Directive Letters.**

In addition to provision of a Proposed Change Order (“PCO”) Notice and subsequent Change Order request pursuant to Section 14.3.2, receipt of a Directive Letter from the CTRMA shall be a condition precedent to D/B CDA Developer’s right to make a Claim that a CTRMA-Directed Change has occurred. However, the fact that a Directive Letter was issued by the CTRMA shall not be considered evidence that a CTRMA-Directed Change has occurred. The determination as to whether a CTRMA-Directed Change has occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination whether the Directive Letter constituted a change in those requirements. The foregoing requirements do not require that a Directive Letter be issued by the CTRMA in order for D/B CDA Developer to have the right to receive compensation for Development Work within the original scope of the Development Work (such as certain types of Utility Adjustment Work) for which additional compensation is specifically allowed under this Section 14.

14.1.2 **Right of the CTRMA to Issue Change Orders.**

The CTRMA may, at any time and from time to time, without notice to any Surety or Guarantor, authorize and/or require changes in the Development Work within the general scope of the Development Work pursuant to a Change Order. All additions, deductions or changes to the Development Work as directed by Change Orders shall be executed under the conditions of the original Contract Documents.

14.2 **Procedure for Issuance of Change Orders by the CTRMA.**

This Section 14.2 concerns Change Orders issued by the CTRMA following a Request for Change Proposal and Change Orders unilaterally issued by the CTRMA.

14.2.1 **Request for Change Proposal.**

14.2.1.1 If the CTRMA desires to issue a CTRMA-Directed Change or to evaluate whether to initiate such a change, the CTRMA may, at its discretion, issue a Request for Change Proposal. The CTRMA may, at any time, ask D/B CDA Developer to provide two alternative Change Order forms in accordance with Section 14.3.3.

14.2.1.2 Within five Business Days after D/B CDA Developer’s receipt of a Request for Change Proposal, the CTRMA and D/B CDA Developer shall arrange an initial consultation (at no charge to the CTRMA) concerning the estimated cost and time impacts. D/B CDA Developer shall provide data regarding such matters as requested by the CTRMA.

14.2.1.3 After the initial consultation and delivery by D/B CDA Developer of data and information as described in Section 14.2.1.2, the CTRMA shall notify D/B CDA