



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

June 26, 2019
AGENDA ITEM #8

Approve Amendment No. 1 to the Webber, LLC agreement to provide additional incentives for schedule acceleration on the Manor Expressway (290E) Phase III Project

Strategic Plan Relevance: Regional Mobility
Department: Engineering
Contact: Justin Word, Director of Engineering
Associated Costs: \$1,500,000
Funding Source: Project Budget
Action Requested: Consider and act on draft resolution

Project Description/Background - The Central Texas Regional Mobility Authority received a proposal from the Contractor (Webber, LLC) to establish a new intermediate milestone and offer expanded incentives to further encourage accelerated project delivery.

The Project includes construction of two tolled direct connectors for the CTRMA, the Southbound SH 130 to Westbound 290E (SB/WB) and Northbound SH 130 to Westbound 290E (NB/WB) direct connectors. The project also includes construction of a third non-tolled direct connector for TxDOT, the Eastbound 290E to Southbound SH 130 (EB/SB) direct connector. The original executed construction contract included two milestones, one interim milestone for the SB/WB direct connector, and a second for the entire Project. The SB/WB direct connector milestone included a maximum 45-day incentive payment of \$8,000 per day for early completion of this direct connector.

The Contractor has proposed to increase the maximum 45-day incentive payment for the SB/WB direct connector milestone to a maximum of 170 days.

Additionally, the Contractor has proposed to add a new intermediate milestone for completion of the NB/WB direct connector, after the SB/WB direct connector but prior to the substantial completion of the full Project. This new NB/WB milestone would include a maximum 100-day incentive payment of \$5,000 per day for completion of this direct connector earlier than this milestone. It would also include an associated

Liquidated Damage for completion of the direct connector after the new milestone of \$5,000 per day, with no maximum limits for duration.

A CTRMA financial analysis has determined this contract amendment could generate potential net revenue benefits of up to \$2.5 million to the Authority if earlier completions of the SB/WB and NB/WB direct connectors are realized.

Previous Actions - The Central Texas Regional Mobility Authority awarded the Manor Expressway (290E) Construction Contract to Webber, LLC and authorized and directed the Executive Director to execute an agreement for construction of the Project on August 22, 2018.

Action Requested/Staff Recommendation - Staff recommends approval of Contract Amendment No. 1 to add a new milestone for completion of the NB/WB direct connector with associated maximum incentive payment of 100 days for its completion prior to the new milestone and daily Liquidated Damages for its completion after the new milestone. Both incentive payments and Liquidated Damages for completion of the NB/WB direct connector are to be incurred at a rate of \$5,000 per day. Additionally, the maximum incentive payment for completion of the SB/WB direct connector will be increased from 45 days to 170 days. The cumulative change to available incentive payments on the Project is an increase of \$1,500,000.

Backup Provided: Draft Resolution
Draft Contract Amendment No. 1

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

RESOLUTION NO. 19-0XX

**APPROVING AMENDMENT NO. 1 TO THE CONTRACT WITH WEBBER, LLC FOR
CONSTRUCTION OF THE MANOR EXPRESSWAY (290E) PHASE III PROJECT TO
PROVIDE ADDITIONAL INCENTIVES FOR SCHEDULE ACCELERATION**

WHEREAS, the Manor Expressway (290E) Phase III Project (“Project”) consists of the construction of two tolled direct connectors for the Mobility Authority, the Southbound SH 130 to Westbound 290E (“SB/WB”) and Northbound SH 130 to Westbound 290E (“NB/WB”) and a third non-tolled direct connector for TxDOT, the Eastbound 290E to Southbound SH 130 (“EB/SB”) direct connector; and

WHEREAS, by Resolution No. 18-044, dated August 22, 2018, the Board of Directors awarded a contract to Webber, LLC (the “Contract”) for construction of the Project which includes certain incentives for early completion of the SB/WB direct connector; and

WHEREAS, Webber, LLC has proposed additional incentives to further accelerate completion of the SB/WB direct connector and a new incentive for early completion of the NB/WB direct connector; and

WHEREAS, the Mobility Authority has determined that early completion of the Mobility Authority’s director connectors could generate net revenue benefits of up to \$2,500,000 if the earliest incentivized completion dates for both the SB/WB and NB/WB direct connectors are realized; and

WHEREAS, the Executive Director and Webber, LLC have negotiated Amendment No. 1 to the Contract to increase the current 45-day incentive payment for the SB/WB direct connector to 170 days and add a new intermediate milestone for the completion of the NB/WB direct connector consisting of a 100-day incentive payment for early completion and daily liquidated damages for late completion associated with this new intermediate milestone; and

WHEREAS, the Executive Director recommends that the Board of Directors approve Amendment No. 1 to the Contract in the form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves Amendment No. 1 to the contract with Webber, LLC for construction of the Manor Expressway (290E) Phase III Project; and

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to finalize and execute Amendment No. 1 to the contract with Webber, LLC on behalf of the Mobility Authority in the form or substantially the same form attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of June 2019.

Submitted and reviewed by:

Approved:

Geoffrey Petrov, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors

Exhibit A

Central Texas Regional Mobility Authority

**MANOR EXPRESSWAY (290E) PHASE III
CONSTRUCTION PROJECT**

CONTRACT NO. 18290E22705C

**FOR OPERATIONAL IMPROVEMENTS INCLUDING CONSTRUCTION OF
THREE DIRECT CONNECTORS, A COLLECTOR DISTRIBUTOR ROAD, AND OTHER
ASSOCIATED INTERCHANGE IMPROVEMENTS**

**CONTRACT AGREEMENT
AMENDMENT No. 1**

This Amendment No. 1 to Contract No. 18290E22705 (the “Contract”) is made and entered into to be effective as of _____, 2019, between the Central Texas Regional Mobility Authority, 3300 N. I-35, Suite 300, Austin, Texas, 78705, hereinafter called the “Authority” and Webber, LLC or his, its or their successors, executors, administrators and assigns, hereinafter called the Contractor.

In consideration of the Authority’s acceptance of the covenants and agreements set forth herein, the undersigned parties hereby agree as follows:

- a. General Notes, Item 8 – Persecution and Progress of the Plans and Special Provision 000-001-RMA are amended as attached.
- b. Pay Item “Incentive Payment” in the amount of \$1,860,000 is added to the total Bid Amount, increasing the total Contract value to \$73,096,424.39. Incentive Payment item will only be invoiced by and paid to the Contractor in accordance with the terms of the General Notes, Item 8 – Persecution and Progress of the Plans, as attached.
- c. Effect of Amendment on the Contract – Except as such terms are specifically modified by this Amendment, all terms and conditions of the Contract shall continue in full force and effect.
- d. Counterparts – This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Entire Agreement – This Amendment constitutes the entire and exclusive agreement between the Parties relating to the specific matters covered herein. All prior or contemporaneous oral or written agreements, understandings, representations and/or practices relative to the

foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

- f. Texas Law – This Amendment shall be governed and construed in accordance with the laws of the State without regard to conflict of law principles.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment the day and year written above.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____
Name: Mike Heiligenstein
Title: Executive Director

CONTRACTOR: WEBBER, LLC

By: _____
Name:
Title:

Project Number: CC-114-2-104, etc

County: Travis

Highway: 290E, SH 130

Sheet:

Control: 0114-02-104, etc.

Alterations to the cancellation and maximum rate must be approved by the Engineer or pre-determined by official policy of the officers governing authority.

ITEM 8 – PROSECUTION AND PROGRESS

Electronic versions of schedules will be saved in Primavera P6 format and delivered in .PDF and .XER formats.

Working days will be charged in accordance with 8.3.1.1. “Five-Day Workweek”.

A CPM schedule in Primavera is required. Use software fully compatible with Primavera P6. The work performed and in accordance to the schedule requirement will be paid for at a price of \$10,000 for the baseline schedule once it is accepted by the Engineer. An additional \$2,500 will be paid monthly for 31 months on all subsequent monthly schedules once they are accepted by the Engineer. The quantity paid under this Item will not exceed the total quantity of 31 months except as modified by change order. The contractor will be in noncompliance with this work if the contractor fails to provide an accepted schedule according to contract requirements within the time frame established by the Engineer. No payment will be made for the month(s) in question and the total final payment will be reduced by the number of month(s) the Contractor was in noncompliance. The remaining unpaid months of schedules less non-compliance months will be paid on final acceptance of the project, if all work is complete and accepted in accordance with Standard Specifications Article 5.12, “Final Acceptance.”

The Construction Engineering and Inspection team will maintain a project fact sheet. Provide updated project status and upcoming activities to the Construction Engineering and Inspection team on a monthly basis.

Provide via email a 6-week look-ahead schedule in Gantt chart format. Submit weekly prior to the project meeting or by noon on Friday, whichever comes first. Designate each activity as night or day shift and include the name of the foreman or contractor. The chart shall have a specific section dedicated solely to lane closures and detours. Each lane closure and detour shall be an individual item on the schedule.

The Southbound SH 130 to Westbound 290E Direct Connector (S/W) Interim Milestone will include Substantial Completion (as defined in Special Provision 001-001-RMA) of the Southbound SH 130 to Westbound 290E Direct Connector, including removal of the existing 290E Westbound Entrance Ramp and opening of the temporary 290E Westbound Entrance Ramp. The S/W Interim Milestone shall be completed within 380 days of Full Notice to Proceed (NTP), issued on March 4, 2019. There will be an \$8,000 per day incentive for early completion of the S/W Interim Milestone, with a maximum of 170 days of incentive payments. The Contractor will not be entitled to S/W Interim Milestone incentive payments if Substantial Completion of the S/W Interim Milestone is not achieved earlier than 380 days from NTP for any reason other than, prior to 380 days from NTP, a change order is issued to add working days or working days are suspended under Article 8.4.. For Substantial Completion of the S/W Interim Milestone in excess of 380 days from NTP, there will be Liquidated Damages assessed at \$8,000 per day. There is no cap on the number of days for the Liquidated Damages assessment.

The Northbound SH 130 to Westbound 290E Direct Connector (N/W) Interim Milestone will include Substantial Completion (as defined in Special Provision 001-001-RMA) of the Northbound SH 130 to Westbound 290E Direct Connector. The N/W Interim Milestone shall be

Project Number: CC-114-2-104, etc

County: Travis

Highway: 290E, SH 130

Sheet:

Control: 0114-02-104, etc.

completed within 450 days of NTP. There will be an \$5,000 per day incentive for early completion of the N/W Interim Milestone, with a maximum of 100 days of incentive payments. The Contractor will not be entitled to N/W Interim Milestone incentive payments if Substantial Completion of the N/W Interim Milestone is not achieved earlier than 450 days from NTP for any reason other than, prior to 450 days from NTP, a change order is issued to add working days or working days are suspended under Article 8.4. For Substantial Completion of the N/W Interim Milestone in excess of 450 days from NTP, there will be Liquidated Damages assessed at \$5,000 per day. There is no cap on the number of days for the Liquidated Damages assessment.

Completion of Site for the Systems Integrator includes completion of installation of: gantry, maintenance area pavement, lightning protection system, loop detectors and risers, electrical conduit and piping, equipment placement and installation, and all other project elements required to provide a completed site to the Systems Integrator. Completion of Site for the Systems Integrator shall also include the switchover of the TxDOT ITS fiber line on SH 130 north of US 290 from the temporary overhead poles to the permanent underground duct bank, including any relocation of the permanent duct bank as shown in the plans.

For the Project Substantial Completion Milestone, the Contractor will have 580 days from NTP to have the entire project open to traffic. For every day in excess of 580 days, there will be Liquidated Damages assessed at \$18,000 per day. There is no cap on the number of days for this assessment. There are no Incentive payments for opening to traffic sooner than 580 days. Substantial Completion is defined as the entire project open to traffic as approved by the Mobility Authority.

For attaining Final Acceptance, the Contractor will have 670 days from NTP. For every day in excess of 670 days, there will be Liquidated Damages assessed at \$5,000 per day. There is no cap on the number of days for this assessment.

Lane Closure Liquidated Damages (LCLDs) will be assessed as shown in the **Table 1** below. Specific lane closures during specific timeframes will be assessed based on these fees on an hourly basis. For LCLDs, the hour will be broken into four 15-minute periods, rounded up to the nearest 15-minute period. For example, if one of the SH 130 southbound mainlanes (1L) from Gregg Manor Entrance Ramp to US 290 Exit Ramp (Segment 1SB) remains closed until 5:40 AM, the assessment would be $0.75 \text{ hours} \times \$30,000 = \$22,500$.

Any unauthorized lane closures will result in an assessment to the Contractor of \$1,000 per lane per hour or the assigned LCLD in the table, whichever is the higher amount, including the lanes and times marked in Table 1 as "NA".

All Liquidated Damage assessments for the Contractor will be subtracted from the value of the payment application for that associated period. Incentives assessments for the Contractor for the S/W Interim Milestone up to a maximum of 45 days will be added to the value of the payment application for the period immediately following approval of Substantial Completion of the S/W Interim Milestone by the Mobility Authority. All additional incentives assessments for the Contractor will be added to the value of the payment application for the period immediately following approval of Project Substantial Completion by the Mobility Authority.

Special Provision to Item 000

Schedule of Liquidated Damages

Final Acceptance Liquidated Damages (LD) in the amount of \$5,000 per day will be assessed for each calendar day that Final Acceptance is not met per contractual requirements for Final Acceptance.

Project Substantial Completion Liquidated Damages (LD) in the amount of \$18,000 per day will be assessed for each calendar day that Substantial Completion is not met per contractual requirements for Substantial Completion.

S/W Interim Milestone Liquidated Damages (LD) in the amount of \$8,000 per day will be assessed for each calendar day that Substantial Completion of the S/W Interim Milestone is not met per contractual requirements for the S/W Interim Milestone.

N/W Interim Milestone Liquidated Damages (LD) in the amount of \$5,000 per day will be assessed for each calendar day that Substantial Completion of the N/W Interim Milestone is not met per the contractual requirements for the N/W Interim Milestone.