



CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY

October 30, 2024
AGENDA ITEM #12

Discuss and consider approving a contract with Carrington Coleman, Sloman & Blumenthal LLP for legal services for the 183A Phase III Project and the 183 North Project

Strategic Plan Relevance:	Not Applicable
Department:	Legal
Contact:	Geoff Petrov, General Counsel
Associated Costs:	Not to exceed \$500,000
Funding Source:	183A Phase III Project funds and/or 183 North Project funds
Action Requested:	Consider and act on a draft resolution

Background:

As discussed in the monthly project updates, both the 183A Phase III Project and the 183 North Project are tracking behind schedule. As a result, it would be prudent to retain counsel to provide objective evaluation of the Mobility Authority's legal position and assist with any claims in the event one or both of the contractors for these projects fails to meet their respective completion deadlines. Therefore, the Executive Director and General Counsel request authorization to engage outside legal counsel to assist with legal issues associated with these projects.

Backup provided: Draft Resolution; Draft contract for Legal Services

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

RESOLUTION NO. 24-0XX

AUTHORIZING THE EXECUTIVE DIRECTOR TO HIRE OUTSIDE COUNSEL

WHEREAS, by Resolution No. 20-063 dated September 30, 2020, the Central Texas Regional Mobility Authority (Mobility Authority) Board of Directors (Board) awarded a contract to The Lane Construction Corporation for construction of the 183A Phase III Project; and

WHEREAS, by Resolution No. 21-011 dated February 24, 2021, the Board approved a contract with Great Hills Constructors, a joint venture between Archer Western Construction, LLC and Sundt Construction Inc., for the design and construction of the 183 North Mobility Project; and

WHEREAS, based on reports by the Mobility Authority's construction oversight team, both projects are currently tracking behind schedule; and

WHEREAS, in order to be prepared in the event that claims or other legal issues arise on either of these projects, the Executive Director has negotiated a proposed contract for legal services with Carrington, Coleman, Slothman & Blumenthal LLP which is attached hereto as Exhibit A; and

WHEREAS, the Executive Director requests that the Board approve the contract with Carrington, Coleman, Slothman & Blumenthal LLP and authorize him to spend up to \$500,000 for legal services associated with the 183A Phase III Project and/or the 183 North Project.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the contract with Carrington, Coleman, Slothman & Blumenthal LLP for legal services associated with the 183A Phase III Project and/or the 183 North Project in the form or substantially the same form attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized to spend up to \$500,000 for legal services associated with the 183A Phase III Project and/or the 183 North Project.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of October 2024.

Submitted and reviewed by:

Approved:

James M. Bass
Executive Director

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

Exhibit A

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

LEGAL SERVICES CONTRACT

This Legal Services Contract (this "Contract") by and between Central Texas Regional Mobility Authority, whose address is 3300 North IH-35, Suite 300, Austin, Texas 78705 ("CTRMA") and Carrington Coleman, Sloman & Blumenthal LLP whose address is 901 Main Street, suite 5500, Dallas, Texas 75202 (the "Firm") is entered into as of May 16, 2022 (the "Effective Date"). CTRMA and the Firm may also individually be referred to herein as a "Party" and collectively, as the "Parties."

RECITALS

WHEREAS, CTRMA is a regional mobility authority under Chapter 370 of the Texas Transportation Code ("Act") and is authorized to enter into agreements necessary or incidental to its duties and powers; and

WHEREAS, to carry out its duties and powers under the Act, CTRMA requires the legal services described in this Contract;

NOW, THEREFORE, in consideration of the payments and mutual promises hereinafter stipulated, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Legal Services.**

A. Scope of Services. The Firm shall provide legal services ("Services"), which may include without limitation both litigation and transactional work, as requested by CTRMA, on matters relating to CTRMA's 183A Phase III Project and/or 183 North Project. All Services shall be of the highest quality and performed in compliance with The Texas Lawyer's Creed.

B. Assignment of Specific Tasks. Upon oral or written directive from CTRMA, the Firm will commence work on specific tasks within the scope of services described above, including preparation of a budget (if requested) and identification of legal issues and defenses for such task in accordance with Section 3 hereof. The Firm will update its assessment of legal issues and defenses if there is a material change during the course of the Firm's work on the matter or upon request of CTRMA.

C. Litigation Practices. No appeals of any case may be taken without the written approval of CTRMA's General Counsel. The Firm shall not add or remove parties from a matter without the prior approval of CTRMA's General Counsel. Except for formal discovery, no information or photocopies should be released from CTRMA files to any litigant or other third party without a subpoena or court order from a court of competent jurisdiction. Opportunities for settlement or for alternative dispute resolution must be identified early in the litigation and promptly and fully communicated to CTRMA's General Counsel. The Firm must clearly communicate to any mediator and all other parties to a proposed settlement that settlements are contingent upon and may not be publicized prior to approval by CTRMA's Board of Directors.

D. Defensive Litigation Matters. The Firm will notify CTRMA's General Counsel immediately of any claims, counterclaims, or litigation against CTRMA in connection with cases or matters the Firm is handling. The Firm is not authorized and must never accept service on behalf of CTRMA unless expressly authorized to do so in writing by CTRMA's General Counsel.

E. Modifying the Engagement. Neither the Firm nor CTRMA may unilaterally change or expand this Contract. If the Firm determines that the scope of the Contract needs to be changed, the Firm must notify CTRMA's General Counsel and submit an amended proposal for written approval of the amended scope, which, if approved, may result in other adjustments to the Contract. No work should be done on an expanded engagement unless the amended proposal has been approved by CTRMA in writing. The Firm agrees that CTRMA may withhold payment for additional work performed without advance approval by CTRMA's General Counsel.

2. **Compensation.**

A. Rates. The maximum hourly rates that the Firm will charge CTRMA for Services performed pursuant to this Contract are set forth on Exhibit A attached hereto and made a part hereof for all purposes. At Firm's request, these rates may be increased by up to 5% annually, typically at the beginning of each calendar year. The Firm will notify CTRMA before any changes take effect. For clarification, CTRMA shall not pay secretarial costs, overtime costs, or other costs for administrative or support staff for the Firm

B. Billing Guidelines. For hourly billing, the Firm must:

- o bill by 1/10 of an hour;
- o itemize time entries by each task;
- o charge only actual costs of document management, copies, faxes, and delivery/courier charges;
- o for all travel and expense reimbursement follow CTRMA's requirements for Business Travel and Expenses set forth in Exhibit B attached hereto and made a part hereof for all purposes;
- o meals and food charges other than food service at business meetings shall not be reimbursable;
- o obtain authorization for more than one lawyer to attend a witness interview, deposition, hearing, mediation, conference call, or meeting;
- o not bill CTRMA for electronic legal research resources (i.e., Lexis, Westlaw, or Bloomberg Law);
- o use or employ expert witnesses or outside consultants only after written approval of CTRMA's General Counsel;
- o obtain pre-approval in writing from CTRMA's General Counsel of outside expenditures greater than \$5,000;
- o not bill CTRMA for opening/updating/closing files;
- o not bill CTRMA for clerical tasks (e.g., collating or stapling documents);
- o submit invoices and update status of assigned matters using an electronic format acceptable to CTRMA;
- o submit monthly invoices no later than the 10th day of the month after the end of the billing period;
- o use courier services only when necessary; and
- o keep to a minimum any fees for communications between attorneys within the firm.

Invoices not prepared in accordance with these guidelines may be returned to the Firm without being processed for payment. Billing procedures for alternative fee arrangements shall be separately established.

C. Invoice Review. CTRMA reviews and approves legal services and disbursements on invoices when submitted by the Firm. If CTRMA objects to or requires additional information concerning the invoiced amounts, CTRMA may withhold the questioned amounts, and CTRMA will notify the Firm in writing regarding such objections or request for additional information. The Firm is requested to respond to such notice within 30 days of receipt. Failure by the Firm to provide adequate and timely support for the questioned amounts will result in denial of such charges. After CTRMA reviews the Firm's support for the questioned items, the Firm will receive payment for approved amounts or CTRMA will provide a written reason for the continued non-payment.

D. Audit Rights. The Firm will make available to CTRMA for review, copying, and auditing for the duration of the Firm's work on a specific matter, and for three years after completion of its work on such matter, any and all books and records as may be necessary for CTRMA or its representatives to determine compliance with this Section 2. The Firm's obligations under this subsection shall survive the termination or expiration of this Contract.

3. **Management of Legal Matters.**

A. Communications. All communication regarding any matter handled by the Firm must be directed to CTRMA's General Counsel, unless otherwise directed in writing. CTRMA's General Counsel must be copied on material written communications between Firm and all other parties to the matter, whether adverse or not. The Firm must take care to protect the attorney/client and work product privileges. Accordingly, all memoranda and opinions submitted to CTRMA should contain conspicuous notice that the writing is protected under the applicable privileges.

The Firm shall not discuss any matter handled by the Firm or share information about CTRMA obtained through its work for CTRMA with third parties without express written authorization from CTRMA. The Firm will refer all media inquiries concerning CTRMA to CTRMA's General Counsel. The Firm's obligations under this subsection shall survive the termination or expiration of this Contract.

B. Budgets. If CTRMA requires a budget for an assigned matter, the Firm shall update such budget whenever there is a material change to the budget or at CTRMA's request and, in any event, no less than annually.

C. Compliance with Applicable Law. The Firm is expected to assist CTRMA in complying with all applicable laws and regulations related to a specific legal matter on which the Firm is working.

4. **Insurance**. The Firm will, at its own cost and expense, obtain insurance coverage in the amounts specified in Exhibit C attached hereto and made a part hereof for all purposes. The Firm agrees that it will maintain any and all required insurance in full force and effect while performing any Services for CTRMA. Prior to beginning its performance of the Services, the Firm will furnish

certificates of insurance in a form acceptable to CTRMA and evidencing compliance with the requirements of this Section 4.

5. **Termination.** Either Party may terminate this agreement upon written notice to the other Party at the address set forth in Section 9, below. Upon termination, the Firm shall (a) cease all representation of CTRMA, (b) take appropriate action or advise CTRMA's General Counsel of any action needed to be taken to protect any interest of CTRMA, and (c) withdraw from the matter as required by law. All files, materials, work product, and attorney-client matters will be returned to CTRMA. The Firm may keep copies of legal materials it deems necessary. The Firm will cooperate with the transfer of all matters to CTRMA's General Counsel or another law firm at no cost to CTRMA. The Firm's obligations under this Section 5 shall survive the termination or expiration of this Contract.

6. **Conflicts of Interest.** The Firm represents to CTRMA, as of the Effective Date and throughout the duration of any Services provided hereunder, that it, and each of its employees: (a) has no financial or other beneficial interest in any contractor, engineer, consultant, product, or service evaluated or recommended by the Firm, except as expressly disclosed in writing to CTRMA, (b) will discharge its responsibilities under this Contract professionally, impartially, and independently, and after considering all relevant information related thereto, and (c) is under no contractual or other restriction or obligation, the compliance with which is inconsistent with the execution of this Contract or the performance of its obligations hereunder. Conflicts of interest may only be waived in writing by CTRMA's General Counsel.

7. **Open Records.** The Firm acknowledges that although attorney-client communications are expected to be kept confidential and may be protected from disclosure, this Contract and the Firm's work product under this Contract may be subject to disclosure under the Texas Public Information Act (Texas Government Code Chapter 552).

8. **Representations and Warranties**

A. Firm represents, warrants, and covenants to CTRMA that (a) its signatory to this Contract has the full right, power, capacity, and legal authority to enter into and bind the Firm; (b) Firm has the full right, power, capacity, and legal authority to fully perform all obligations required of it under this Contract in accordance with its terms; (c) the execution, delivery, and performance of this Contract has been duly authorized by the Firm and does not and will not violate or cause a breach of any other agreement or obligation to which it is a party or by which it is bound; and (d) no approval or other action by any third party is required in connection herewith.

B. Firm represents, warrants, and covenants that (i) it does not, and will not during the Term, boycott Israel in violation of Texas Government Code, Chapter 2271 and (ii) it is not identified on any list of scrutinized companies or companies known to have interactions with a foreign terrorist organization as described in Texas Government Code, Chapter 2252, Subchapter F, and (iii) it does not, and will not during the Term, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association in violation of Texas Government Code, Chapter 2274.

C. Upon CTRMA's request, Firm will timely furnish CTRMA's General Counsel with satisfactory proof of its compliance with these warranties, covenants, and representations.

9. **Miscellaneous.**

A. **Notice.** All notices required to be given hereunder must be in writing and must be sent by certified mail, return receipt requested, hand delivered, or via reputable overnight air courier, addressed as follows:

a) If to CTRMA:

Central Texas Regional Mobility Authority
Attn: General Counsel
3300 North IH-35, Suite 300
Austin, Texas 78705

b) If to the Firm:

Carrington, Coleman, Sloman & Blumenthal LLP
Attn: Cathy Altman
901 Main Street, Suite 5500
Dallas, Texas 75202

or to such other address as either Party may provide in writing pursuant to the requirements of this subsection. All written notices, demands, and other papers or documents served upon CTRMA or the Firm will be deemed served or delivered for all purposes either (a) three days following the U.S. Postal Service's postmarked date if mailed, registered or certified mail and return receipt requested, or (b) immediately upon actual delivery or refusal of delivery if transmitted by courier or overnight delivery service.

B. **Assignment.** The Firm has no right or authority to assign its rights and/or obligations or to delegate its duties under this Contract without CTRMA's prior written approval, and such approval may be granted or withheld at CTRMA's sole discretion. Any attempted assignment or delegation without such approval will be void and constitute a material breach of this Contract. This Contract and all of the terms and provisions hereof will be binding upon, and will inure to the benefit of, the Parties and their respective successors and approved assigns. Notwithstanding anything to the contrary in this subsection, the Firm may not, under any circumstance, subcontract out any Services it has been engaged to perform hereunder. For clarity, the Firm may subcontract other miscellaneous, non-legal tasks such as document management, photocopying, courier services, or court reporter services.

C. **Waiver.** The failure of either Party to object to or to take affirmative action with respect to any conduct of the other Party that is in violation of the terms hereof will not be construed as a waiver thereof, nor of any subsequent breach or wrongful conduct. The rights and remedies set forth herein are intended to be cumulative, and the exercise of any right or remedy by either Party will not preclude or waive its exercise of any other rights or remedies hereunder or pursuant to law or equity.

D. **Governing Law; Venue.** This Contract will be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws rules. The Parties acknowledge that venue is proper in Travis County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

E. Attorney's Fees. Attorney's fees are recoverable in an action to enforce this Contract.

F. Counterparts. This Contract 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.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Contract effective on the date and year first written above.

**CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY,**

a regional mobility authority and a political
subdivision of the State of Texas

**CARRINGTON, COLEMAN, SLOMAN &
BLUMENTHAL LLP**

James M. Bass
Executive Director

Cathy Lilford Altman
Partner

EXHIBIT B

BUSINESS TRAVEL AND EXPENSES

It is the policy of the CTRMA to reimburse reasonable business travel expenses. All business travel must be approved in advance by the General Counsel. When approved, the actual costs of travel, lodging and other expenses (excluding meals) directly related to accomplishing business travel objectives will be reimbursed by the CTRMA. The Firm should always ensure that expenses are limited to reasonable amounts, and that the CTRMA receives good value in return.

Travel expenses should be itemized on the Firm's monthly invoice. The monthly invoice must be accompanied by receipts for each expense, and must be submitted within 60 days of the completion of the business travel. Any items over the 60 days will be denied reimbursement.

The CTRMA will not reimburse travel expenses incurred by a spouse or other individual accompanying a consultant on business.

Sales tax on goods purchased will not be reimbursed. Sales tax for food service and hotel stays are the only sales taxes that will be reimbursed. Please request a sales tax exemption form from the General Counsel before purchasing goods.

The Firm shall be responsible for repayment of inappropriately reimbursed expenses whenever an audit or subsequent review of the travel expense reimbursement documentation finds that such expenses were reimbursed contrary to these guidelines.

The following are reimbursement guidelines for business travel:

- **Transportation Services**

- Air travel arrangements should be made as far in advance as possible and should represent the lowest available fare in coach or economy class. Last minute flights (reservations made within two weeks of event) must be approved prior to purchase by the General Counsel.
- Reasonable fares for shuttle service, bus service, van pool, taxi service or other public transportation will be reimbursed.
- Car rental fees (a compact or mid-size vehicle for one person; a full-size vehicle for two or more persons) will only be reimbursed if approved in advance by the General Counsel.
- When renting vehicles, consultants should elect loss damage waiver insurance coverage.
- Gasoline should be refilled in any rental vehicle prior to returning it at the conclusion of business travel.

- **Lodging**

- Accommodations in approved hotels or motels will be reimbursed, using the GSA rate as a guideline. Exceptions to the GSA rate will require an explanation such as:
- (1) when the cost of the hotel would reduce total travel costs, such as eliminating the need for a rental car; (2) when the cost of the hotel is a conference rate; (3) when time constraints associated with business meetings require lodging at a closer hotel.

- **Food Service at Business Meetings**
 - Food service at business meetings required for the performance of CTRMA business (such as workshops, strategy sessions, and other official business as determined by the General Counsel) will be reimbursed.
 - The Firm's monthly invoice should include: purpose of the meeting; time and location of the meeting; and names of principal attendees.

- **Mileage Reimbursement**
 - Use of a personal vehicle on CTRMA business will be reimbursed using the current Internal Revenue Service rate. The Firm's monthly invoice should include: purpose of the travel; points of travel; dates of travel; and miles eligible for reimbursement.
 - If a personal vehicle is used, the maximum reimbursement will be at the lower of the IRS rate times the number of miles driven, or the lowest quoted airfare at the time of travel for overnight stay.

- **Other Business/Travel Expenses**
 - Parking and toll fees will be reimbursed, with receipts.
 - Other minor expenditures should have a receipt and justification.
 - There will be no reimbursement for any of the following: parking or traffic violations; entertainment, including in-hotel movies; and alcoholic beverages of any kind. In addition, there will be no reimbursement of sales tax incurred on the purchase of goods. Instead, consultants who are authorized to purchase approved goods on behalf of the CTRMA should use a tax-exempt form, available from the General Counsel.
 - Cancellation fees associated with business travel will be reimbursed only if it is in the best interest of the CTRMA.
 - Incremental expenses for any non-consultant companion traveling with the consultant will not be reimbursed by the CTRMA.

If a consultant is involved in a motor vehicle or other accident, or if a consultant sustains an injury while traveling on business, the Firm must promptly report the incident to the General Counsel. If a vehicle owned, leased or rented by the CTRMA is involved in an accident, causes any injury or damage, or incurs any damage, the Firm must promptly report the incident to the General Counsel. Vehicles owned, leased or rented by the CTRMA may not be used for personal business.

If a consultant needs guidance or assistance with any procedures related to business travel, travel arrangements, expense reports, or reimbursement for any specific expense, then the consultant should check with the General Counsel.

Consultants are reminded to ensure that travel records, expense reports and receipts are accurate and complete. Falsification of any records, including but not limited to expense reports; or falsification or alteration of any documentation, such as receipts, may lead to corrective action, up to and including termination of the Contract.

EXHIBIT C

INSURANCE REQUIREMENTS

[See attached.]

INSURANCE REQUIREMENTS

Prior to beginning the Services described in this Contract, the Firm shall obtain and furnish certificates to the CTRMA for the following minimum amounts of insurance:

a. **WORKERS' COMPENSATION INSURANCE.** In accordance with the laws of the State of Texas covering all of Contractor's employees and employer's liability coverage with a limit of not less than \$1,000,000. A "Waiver of Subrogation" in favor of the CTRMA shall be provided.

b. **COMMERCIAL GENERAL LIABILITY INSURANCE.** On an "occurrence basis" with limit a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, including those resulting in death; and property damage on an "occurrence basis" with an aggregate limit of not less than \$2,000,000. A "Waiver of Subrogation" in favor of the CTRMA shall be provided.

c. **BUSINESS AUTOMOBILE LIABILITY INSURANCE.** Applying to owned, non-owned, and hired automobiles in an amount not less than \$1,000,000 for bodily injury, including death, to anyone person, and for property damage on account of anyone occurrence. The policy shall insure any vehicle used in connection with the Contractor's obligations under this Contract. A "Waiver of Subrogation" in favor of the CTRMA shall be provided.

d. **PROFESSIONAL LIABILITY INSURANCE.** With minimum limits of not less than \$10,000,000 per claim and \$20,000,000 annual aggregate covering the Services being performed under this Contract.

e. **EXCESS UMBRELLA LIABILITY.** With minimum limits of \$6,000,000 per claim and in the aggregate, annually, as applicable excess of the underlying policies required at a. - c. above. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.

f. **GENERAL FOR ALL INSURANCE.** The Firm shall promptly, upon execution of this Contract, furnish certificates of insurance to the CTRMA indicating compliance with the above requirements. Certificates shall indicate the name of the insured, the name of the insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage

All policies are to be written through companies (a) registered to do business in the State of Texas; (b) rated by A. M. Best Company as "A -" or better (or the equivalent rating by another nationally recognized rating service); and (c) otherwise acceptable to the CTRMA. Such insurance shall be maintained in full force and effect during the life of this Contract or for a longer term as may be otherwise provided for hereunder. Insurance furnished under subsections b., c., d., e. and f. above, shall name the CTRMA as additional insureds and shall protect the CTRMA, the Firm, their officers, employees, directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful wrongful acts or failures to act by the Firm, its officers, employees, directors, agents, and representatives in the performance of the Services rendered under this Contract.

The insurance carrier shall include in each of the insurance policies required under subsections a., b., c., d., e., and f. the following statement: "This policy will not be canceled or non-renewed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Mobility Authority, 3300 N. IH 35, Suite 300, Austin, TX 78705, Attention: General Counsel."