

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

RESOLUTION NO. 06-30

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 43 Tex. Admin. Code § 26.01, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, Transportation Code Section 370.183 requires regional mobility authorities to: set goals for the award of contracts to disadvantaged businesses and attempt to meet those goals; attempt to identify disadvantaged businesses that may provide or have the potential to provide supplies, materials, equipment or services to the authority; and give disadvantaged businesses full access to the authority's contract bidding process; and

WHEREAS, regulations of the Federal Highway Administration ("FHWA") also require the development and implementation of certain policies and procedures for Disadvantaged Business Enterprise ("DBE") participation in projects which receive any federal funding; and

WHEREAS, in Resolution No. 03-60, dated November 5, 2003, the Board of Directors approved and adopted the CTRMA's Business Opportunity Program and Policy ("BOPP") which incorporates the policies and objectives of state and federal laws, and establishes goals that attempt to monitor and encourage disadvantaged and small businesses to participate in the process and award of governmental contracts; and

WHEREAS, the BOPP provides for and anticipates the CTRMA may enter into a Memorandum of Understanding ("MOU") with the Texas Department of Transportation ("TxDOT") whereby the CTRMA adopts the TxDOT DBE Program in order to help insure compliance with the applicable state and federal laws; and

WHEREAS, such MOU will detail how the parties will work together to satisfy state and federal laws, as well as establish the obligations and responsibilities of the respective parties; and


WHEREAS, the CTRMA staff and TxDOT have been developing a draft MOU acceptable to both parties, a copy of which is attached as Attachment "A," and the CTRMA Executive Director and staff seek authorization to pursue finalization and consummation of the MOU with TxDOT.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors finds that adoption of the TxDOT DBE Program is consistent with the purposes of the BOPP and helps further the goals and objectives of the BOPP; and

BE IT FURTHER RESOLVED, that the Board of Directors authorizes the Executive Director and staff to negotiate the final MOU in form and substance substantially similar to the draft MOU attached hereto as Attachment "A," and further authorizes the Executive Director to execute the final MOU consistent with the provisions of this Resolution.


Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 31st day of May, 2006.

Submitted and reviewed by:



Tom Nielson
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Robert E. Tesch
Chairman, Board of Directors
Resolution Number 06-30
Date Passed 05/31/06

ATTACHMENT "A"
To
Resolution No. 06-30
Draft Memorandum of Understanding
By and Between the CTRMA and TxDOT
Adopting TxDOT's DBE Program

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**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION BY
THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
OF THE
TEXAS DEPARTMENT OF TRANSPORTATION FEDERALLY-APPROVED
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

This Memorandum of Understanding is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")**, an agency of the State of Texas; and the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY ("the CTRMA")**, a political subdivision of the State of Texas created by Travis and Williamson Counties in accordance with the Texas Transportation Code and the petition and approval process established in 43 Tex. Admin. Code Sec. 26.01 et seq.

Whereas, from time to time from CTRMA receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the CTRMA with the construction of turnpike projects; and

WHEREAS, the CTRMA, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises ("DBE"), as defined by 49 CFR 26 ("DBE Program"); and

WHEREAS, TxDOT has implemented a DBE Program that is approved by FHWA pursuant to 49 CFR part 26; and

WHEREAS, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the CTRMA's procurement of construction services are subject to review and/or concurrence by TxDOT; and

WHEREAS, the CTRMA and TxDOT undertake substantially similar roadway construction projects and construct their respective projects using substantially the same pool of contractors; and

WHEREAS, the CTRMA desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

WHEREAS, TxDOT and the CTRMA find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the CTRMA's adoption of the TxDOT DBE Program to meet the federal requirements;

NOW, THEREFORE, TxDOT and the CTRMA, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The CTRMA is a sub-recipient of federal assistance for roadway construction projects and, in accordance with 49 CFR § 26.21 must implement a federally approved DBE Program. The CTRMA receives its federal assistance through TxDOT. As a sub-recipient, the CTRMA has the option of developing its own program or adopting and operating under TxDOT's approved DBE Program. For a variety of reasons, the FHWA recommends that sub-recipients, such as the CTRMA, adopt the state DOT DBE programs administered through TxDOT.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the CTRMA to achieve its DBE participation in CTRMA

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federally assisted roadway construction projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the CTRMA and for TxDOT.

(5) The CTRMA and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the CTRMA:

(a) The CTRMA will be responsible for project monitoring and data reporting to TxDOT. The CTRMA will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, if any, to the CTRMA.

(b) The CTRMA will recommend contract-specific DBE goals, if any, consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The CTRMA's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The CTRMA and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues.

(c) TxDOT will cooperate with the CTRMA in an effort to meet the timing and other requirements of CTRMA projects.

(d) The CTRMA will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its roadway construction projects and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT roadway construction projects will also be eligible to participate on CTRMA roadway construction projects subject to the DBE Program, unless otherwise prohibited from bidding on a CTRMA project under applicable law or the CTRMA Procurement Policy. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program.

(f) The CTRMA will conduct investigations and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort, Commercially Useful Function, etc. The CTRMA and TxDOT will work together to achieve a mutually acceptable goal; however, TxDOT will retain final decision-making authority on those issues.

(g) The CTRMA will designate a liaison officer to coordinate efforts with TxDOT DBE Program administrators and to respond to questions from the public and private sector regarding the CTRMA's administration of the DBE Program through TxDOT.

(h) CTRMA will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The CTRMA and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the Central Texas area.

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(j) The CTRMA will submit DBE semi-annual progress reports to TxDOT.

(k) The CTRMA will participate in TxDOT sponsored training classes to include topics on DBE Annual Goals, DBE Construction Project Goal Setting, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the CTRMA projects in the DBE Education and Outreach Programs.

(6) In the event there is a disagreement between TxDOT and the CTRMA about the implementation of the TxDOT DBE Program by the CTRMA, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, any party may terminate this Memorandum of Understanding by written notice to all other parties. TxDOT will also report the termination and reasons therefore to the FHWA.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the CTRMA will be allowed reasonable time in which to seek approval for a DBE Program without being deemed not to be in compliance with 46 CFR Part 26 or with an approved DBE Program.

(9) This Memorandum of Understanding applies only to projects for which the CTRMA is a sub-recipient of federal funds. The CTRMA may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds and which are not subject to the TxDOT DBE Program, The CTRMA may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

APPROVED AS TO FORM:

TEXAS DEPARTMENT OF
TRANSPORTATION

By: _____
TxDot General Counsel

By: _____
Name: _____
Title:

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APPROVED AS TO FORM:

TEXAS DEPARTMENT OF
TRANSPORTATION

By: _____
CTMRA General Counsel

By: _____
Mike Heiligenstein, Executive Director

TEXAS DEPARTMENT OF TRANSPORTATION

Executed by the Texas Department of Transportation Executive Director and approved by the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Michael W. Behrens, P.E.
Executive Director