

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

RESOLUTION NO. 09-36

**ILA with Cedar Park
Drainage Improvement Construction on 183A
Cedar Park Events Center**

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, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, § 370.033 of the Transportation Code provides that regional mobility authorities may enter into interlocal agreements with other governmental entities for project development related services; and

WHEREAS, the City of Cedar Park, Texas ("Cedar Park") is currently constructing the Cedar Park Events Center (the "CPEC"), including access facilities on the southbound frontage road of the CTRMA's 183A roadway (the "Access Improvements"); and

WHEREAS, the Access Improvements include the construction of a deceleration lane on the 183A right of way and various permitted driveway cuts for ingress and egress to and from the CPEC, all of which are being constructed by Cedar Park under the terms of a construction contract with EBC Construction LLC (the "Cedar Park Construction Contract"); and

WHEREAS, it has been determined that construction of certain drainage improvements (the "Drainage Improvements") regarding subsurface drainage under the existing 183A southbound frontage road and the planned Access Improvements would be beneficial to both Cedar Park and the CTRMA; and

WHEREAS, construction of the Drainage Improvements by Cedar Park's contractor under the Cedar Park Construction Contract as part of the construction of the Access Improvements would be the most efficient and timely manner to complete the Drainage Improvements; and

WHEREAS, Cedar Park and the CTRMA have developed an Interlocal Agreement substantially in the form attached hereto as Attachment "A" (the "Interlocal Agreement") providing for Cedar Park to include the construction of the Drainage Improvements as a change order to the Cedar

Park Construction Contract, with the CTRMA reimbursing the costs and expenses associated with the Drainage Improvements as a benefit to the CTRMA; and

WHEREAS, the CTRMA Board of Directors desires to enter into the Interlocal Agreement with Cedar Park for the purposes set forth herein and as provided in the Interlocal Agreement.


NOW THEREFORE, BE IT RESOLVED, that the CTRMA Board of Directors adopts the Interlocal Agreement in substantially the form attached hereto in Attachment "A" and authorizes the Chairman or the Executive Director to execute and deliver the Interlocal Agreement to Cedar Park upon the adoption of the Interlocal Agreement by the City Council of Cedar Park; and

BE IT FURTHER RESOLVED, that the Interlocal Agreement does not create any further obligations on either Cedar Park or the CTRMA beyond the express terms thereof, and the execution of the Interlocal Agreement by the CTRMA is only for the purposes stated therein.

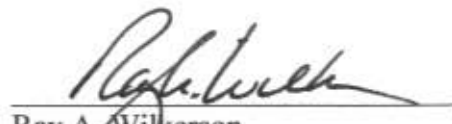
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 24th day of June, 2009.

Submitted and reviewed by:

Approved:



Tom Nielson
General Counsel for the Central
Texas Regional Mobility Authority



Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number 09-36
Date Passed 6/24/09

ATTACHMENT "A"
TO RESOLUTION NO. 09-36
DRAFT CEDAR PARK
INTERLOCAL AGREEMENT

INTERLOCAL AGREEMENT
By and Between
CITY OF CEDAR PARK
and
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

CPEC and Pavement Remedial Work

This Interlocal Agreement (this "Agreement") is dated effective as of _____, 2009, by and between the CITY OF CEDAR PARK ("City"), a home rule municipal corporation of the State of Texas and the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY, a political subdivision of the State of Texas (the "CTRMA").

RECITALS

WHEREAS, the Texas Interlocal Cooperation Act allows public agencies to contract with one another to perform governmental functions and services; and

WHEREAS, the City and the CTRMA mutually desire to be subject to the provisions of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, specifically §791.011 regarding contracts to perform governmental functions and services; and

WHEREAS, the City and the CTRMA have continued to cooperate with each other regarding the construction and operation of the 183A Turnpike Project ("183A") and have entered into several previous Interlocal Agreements addressing various aspects of 183A; and

WHEREAS, the City has initiated development and construction of the Cedar Park Events Center ("CPEC") adjacent to the western right of way line of 183A, and the CTRMA has previously granted an access permit for driveway access to the CPEC from the southbound frontage road of 183A; and

WHEREAS, as part of the construction contract for the CPEC, the City has included the construction by the City of an auxiliary lane along the southbound frontage road of 183A for access to the CPEC; and

WHEREAS, the CTRMA desires and the City agrees that the City will, at CTRMA's request, incorporate certain roadway pavement remedial work designed by CTRMA and on behalf of CTRMA as part of City's construction contract for the 183A southbound frontage road auxiliary lane in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. The City agrees to incorporate CTRMA's requested roadway pavement remedial work as described on Exhibit "A" and Exhibit "B" attached hereto

and incorporated herein for all purposes (the "Pavement Remedial Work") into the auxiliary lane construction contract by change order.

2. The CTRMA agrees to reimburse the City for all direct and indirect costs associated with the completion of the Pavement Remedial Work as set forth in Exhibits A and B attached hereto for the total amount estimated to be \$17,465.00.
3. City agrees, through a change order to its original contract with EBC CONSTRUCTION, LLC ("EBC"), to allow EBC to construct the Pavement Remedial Work as set forth in Exhibits A and B to provide enhanced subsurface drainage along the southbound auxiliary lane between approximate Station 3555+00 and Station 3563+000 of said auxiliary lane.
4. CTRMA agrees to fully reimburse City for all costs and expenses related to the Pavement Remedial Work exactly as billed monthly to City by EBC, the general contractor. CTRMA shall reimburse City to the full extent of the monthly EBC statement related to the Pavement Remedial Work within thirty (30) days from receipt of City's copy of EBC's monthly statement.
5. CTRMA UNDERSTANDS AND AGREES THAT CITY HAS NOT DESIGNED, SELECTED MATERIALS, ESTIMATED QUANTITY OF MATERIALS OR THEIR QUALITY NOR WILL IT BE INSPECTING OR SUPERVISING THE CONSTRUCTION OF THE PAVEMENT REMEDIAL WORK AND HAS NOT RECOMMEND THE USE OF EBC CONSTRUCTION, LLC AS THE GENERAL CONTRACTOR TO CTRMA. CTRMA FURTHER AGREES AND UNDERSTANDS THAT CITY IS NOT MAKING ANY WARRANTIES OR GUARANTEES OF ANY TYPE, KIND OR NATURE WHATSOEVER TO CTRMA AND SHALL NOT BE LIABLE TO CTRMA FOR ANY ERRORS, OMISSIONS OR NEGLIGENCE BY CITY REGARDING THE CONSTRUCTION, DIRECTLY OR INDIRECTLY, OF THE PAVEMENT REMEDIAL WORK. CTRMA UNDERSTANDS AND AGREES THAT CITY IS NOT RESPONSIBLE FOR OR LIABLE TO CTRMA FOR THE QUALITY, QUANTITY, SUITABILITY, TIMELINESS, COSTS AND EXPENSES OF THE WORK AND MATERIALS FOR THE PAVEMENT REMEDIAL WORK. CTRMA AGREES THAT IT SHALL SUPPLY JOB SITE INSPECTORS AT ITS OWN COST AND EXPENSE AND RELY SOLELY UPON ITS OWN JOB SITE INSPECTORS FOR THE PROJECT TO ENSURE THE QUANTITY, QUALITY, SUITABILITY, TIMELINESS, COSTS AND EXPENSES OF THE WORK AND MATERIALS FOR ITS PAVEMENT REMEDIAL WORK.

RECITALS. ALL OF THE RECITALS STATED ABOVE ARE INCORPORATED INTO THIS AGREEMENT AS IF FULLY SET FORTH HEREIN.

Termination for Cause. A party may terminate the Agreement for breach of any provision of this Agreement after providing written notice of the alleged breach to the other party, and allowing the other party at least thirty (30) days after receipt of the written notice in which to cure the alleged breach.

Notices. All notices, demands and requests, including invoices which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when: (i) personally delivered to the intended recipient; (ii) two (2) days after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) delivered in person to the address set forth below for the party to whom the notice was given; (iv) deposited into the custody of a recognized overnight delivery service such as Federal Express Corporation, Emery, or Lone Star Overnight, addressed to such party at the address specified below; or (v) sent by facsimile, telegram or telex, provided that receipt for such facsimile, telegram or telex is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. For purposes of this Section, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

CITY OF CEDAR PARK

City of Cedar Park
Attn.: City Manager
600 N. Bell Blvd.
Cedar Park, Texas 78613
Phone(512) 401-5000
Fax:(512) 258-6083

AND

City of Cedar Park
Attn: City Attorney
600 N. Bell Blvd.
Cedar Park, Texas 78613
Phone: (512) 401-5004
Fax: (512) 401-5013

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

Central Texas Regional Mobility Authority
Attn.: Executive Director
301 Congress Avenue, Suite 650
Austin, Texas 78701
Phone: (512) 996-9778
Fax: (512) 996-9784

Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matter contained herein. The parties may not modify or amend this Agreement, except by written agreement approved by the governing bodies of each party and duly executed by both parties.

Approval. This Agreement has been duly and properly approved by each party's governing body and constitutes a binding obligation on each party.

Assignment. Except as otherwise provided in this Agreement, a party may not assign this Agreement or subcontract the performance of services without first obtaining the written consent of the other party. Notwithstanding the foregoing, nothing in this Agreement shall preclude the City from contracting with third parties for the construction of the Pavement Remedial Work as part of the construction contract for the southbound frontage road auxiliary lane and CPEC.

Non-Waiver. A party's failure or delay to exercise right or remedy does not constitute a waiver of the right or remedy. An exercise of a right or remedy under this Agreement does not preclude the exercise of another right or remedy. Rights and remedies under this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

Paragraph Headings. The various paragraph headings are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any section thereof.

Attorneys' Fees. In any lawsuit concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees from the nonprevailing party, plus all out-of-pocket expense such as deposition costs, telephone calls, travel expenses, expert witness fees, court costs, and other reasonable expenses.

Severability. The parties agree that in the event any provision of this Agreement is declared invalid by a court of competent jurisdiction that part of the Agreement is severable and the decree shall not affect the remainder of the Agreement. The remainder of the Agreement shall be in full force and effect.

Venue. The parties agree that all disputes that arise out of this Agreement are governed by the laws of the State of Texas and venue for all purposes herewith shall be in Williamson County, Texas.

CITY OF CEDAR PARK, TEXAS

By: _____
Brenda Eivens, City Manager
Cedar Park, Texas

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

By: _____
Mike Heiligenstein, Executive Director
Central Texas Regional Mobility Authority