

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

**RESOLUTION NO. 23-018**

**APPROVE A SETTLEMENT AGREEMENT WITH COLORADO RIVER  
CONSTRUCTORS RELATED TO THE 183 SOUTH PROJECT**

WHEREAS, on July 29, 2015, the Central Texas Regional Mobility Authority ("Mobility Authority") and Colorado River Constructors ("CRC"), an unincorporated joint venture between Fluor Enterprises, Inc. and Balfour Beatty Infrastructure, Inc., entered into a design-build contract ("D/B Contract") for the development of a toll road and related roadway improvements on existing US 183 extending approximately eight (8) miles from US 290 to SH 71 in Austin, Texas (the "183 South Project"); and

WHEREAS, CRC has made certain claims for additional compensation and schedule relief arising from the parties' responsibilities, obligations and liabilities related to the 183 South Project, including but not limited to impacts to the project schedule resulting from delays in utility permitting; and

WHEREAS, pursuant Section 25 of D/B Contract, the parties submitted the claims to a disputes board, a formal hearing was held on February 8-9, 2022, and the disputes board issued its findings and recommendations on March 8, 2022; and

WHEREAS, by Resolution No. 22-038 dated August 31, 2022, and Resolution No. 22-045 dated September 28, 2022, the Board approved the First and Second Amendments to the D/B Contract to revise the dispute resolution procedures and allow the parties additional time to attempt to negotiate a settlement of CRC's claims; and

WHEREAS, to avoid potential costs, burdens, uncertainties, and distractions of future litigation, the Executive Director and CRC have reached an agreement settling the disputes; and

WHEREAS, additional actions, including the issuance of a change order, will be necessary to give effect to the settlement; and

WHEREAS, the Executive Director recommends that the Board of Directors approve the settlement agreement with CRC attached hereto as Exhibit A and authorize him to take all such actions as necessary to give effect to the terms of the settlement agreement.

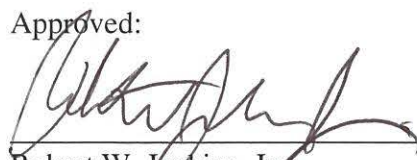
NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the settlement agreement with Colorado River Constructors attached hereto as Exhibit A and authorizes the Executive director to take all such actions as necessary to give effect to the terms of the settlement agreement.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26<sup>th</sup> day of June 2023.

Submitted and reviewed by:

  
James M. Bass  
Executive Director

Approved:

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

**Exhibit A**

## SETTLEMENT AGREEMENT

Whereas, the Central Texas Regional Mobility Authority (“CTRMA”) and Colorado River Constructors, an unincorporated joint venture between Fluor Enterprises, Inc. and Balfour Beatty Infrastructure, Inc. (collectively “CRC”)(CRC and CTRMA are collectively “Parties”) entered into a Design/Build Contract dated July 29, 2015 (“D/B Contract”) for the design and construction of a toll road and related roadway improvements on existing US 183 extending approximately 8 miles from US 290 to SH 71 in Austin, Texas (“Project”). Unless otherwise defined in this Settlement Agreement, capitalized terms in this Settlement Agreement, except where used in headings, shall have the meaning set forth in the D/B Contract.

Whereas, disputes have arisen between the Parties regarding the D/B Contract.

Whereas, the Parties desire to settle, compromise, and resolve all disputes arising out of or related to the D/B Contract and the Project, except as noted herein.

Whereas, this Settlement Agreement is expressly contingent on final approval by TxDOT and FHWA of: (1) the payments to be made under this Settlement Agreement and (2) any change orders required to effectuate the terms of this Settlement Agreement.

NOW, THEREFORE, in consideration of the payment, mutual releases, representations and warranties, and other obligations set forth in this Settlement Agreement, the adequacy and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. **Payment Terms.** In consideration of the full and final release by CRC of all claims that CRC asserted or could have asserted arising out of or related in any way to the D/B Contract and the Project, CTRMA shall pay to CRC \$30 million within 30 days of the submittal of a draw request following authorization by TxDOT/FHWA to release Project funds as evidenced by the execution of Change Order No. 42. The \$30 million comes from (i) an increase in the Design/Build Price in the amount of \$10 million, and (ii) CTRMA’s waiver and release of liquidated damages in the amount of \$20 million.
2. **CTRMA Retention of Funds.** CTRMA will be entitled to keep: (1) \$845,000 of retainage in full satisfaction of CRC’s failure to achieve the D/B Contract performance specifications for ride quality; (2) \$450,000 of retainage for closure of lanes outside of the D/B Contract specifications; and (3) \$886,750 of retainage (“Retainage Holdback”) to cover the cost of completing the work not performed by CRC as specifically identified on Exhibit “A” hereto (“Completion Work”). The Retainage Holdback is capped meaning under no circumstances will CTRMA be entitled to recover from CRC an amount in excess of the Retainage Holdback if the cost of the Completion Work exceeds such amount.
3. **Release of Retainage and Lane Rental Bank Funds.** Within 30 days of the submittal of a draw request following CRC’s submission of any Project documents required by TxDOT/FHWA prior to Final Acceptance, including the documents identified on Exhibit “B” hereto, CTRMA will release to CRC (1) \$1,818,250 of the \$4,000,000

- remaining in retainage (“Retainage Payment”) and (2) the remaining Lane Rental Bank Balance in the amount of \$2,994,250 (“Lane Rental Balance”).
4. Full and Final Release. Except as provided in Paragraph 5 below, CRC releases and waives any and all claims against CTRMA arising out of or relating to the D/B Contract or the Project, including any pass-through claim by a CRC subcontractor, known or unknown or that could have been known that CRC has or may have in connection with the Project. Except as provided in Paragraph 5 below, CTRMA releases and waives any and all claims against CRC arising out of or relating to the D/B Contract or the Project.
  5. Reservation of Claims and Defenses. Notwithstanding anything otherwise contained in this Settlement Agreement, the Parties each retain all claims for contribution and all affirmative defenses, counterclaims, and third-party claims against each other in response to any timely filed action that may be brought against any of the Parties by any third party for personal injury or property damage arising out of the Project to the extent such claims are permitted by the D/B Contract under applicable law. Except as noted below or previously disclosed in writing, the Parties expressly represent that they are unaware of any such personal injury or property damages claims as of the date of the Settlement Agreement and are reserving their rights solely in the event such claim is made in the future. The Parties acknowledge they are aware of a crash that occurred on April 25, 2022, in the southbound lanes of US183 resulting in a fatality. As of the execution of this Settlement Agreement, no claims have been asserted against the Parties arising out of that crash. Further, notwithstanding any other provision in this Settlement Agreement, CTRMA is not releasing any claims that may arise in the future against CRC for latent defects or for claims based on breach of express warranties, and CRC is not releasing any defense to same. Other than the work identified in Paragraph 2, CTRMA represents that it has no current knowledge of any breach of warranty, latent defects, or other claims that are reserved herein.
  6. Warranty Term. The Parties agree that the warranty period for the Interim Design/Build Work began on August 1, 2019 and the warranty period for the remaining work began on May 27, 2021.
  7. Additional Cooperation, Action, and Documents. The Parties agree to cooperate fully and to execute all supplementary or additional documents appropriate to carry out the intent of this Settlement Agreement and to take any additional actions that may be necessary or appropriate to give full force and effect to the terms and provisions of this Settlement Agreement.
  8. No Admission of Liability. By entering into this Settlement Agreement, neither CTRMA nor CRC admit any fault in connection with any of the disputes between the Parties.
  9. Tax Liability and Attorney Fees. The Parties make no representations regarding the Federal or State tax consequences of any of the payments referred to herein and shall not

- be responsible for any tax liability, interest or penalty incurred by the other Party, which in any way arises out of or related to said payment. The Parties understand and agree that each party shall bear its own attorneys' fees and costs in connection with this matter.
10. **Advice of Counsel.** By execution of this Settlement Agreement, each of the Parties expressly acknowledges it has executed the same freely and voluntarily and that it has had the opportunity to seek and obtain advice of counsel, accountants and financial advisors of its choice, regarding the effect of the execution and delivery of this Settlement Agreement. Each party agrees that it has had adequate opportunity to investigate and assess all facts and circumstances relevant to the decision to enter into this Settlement Agreement and is not relying on any express or implied representation, warranty or promise except as expressly contained in this Settlement Agreement.
  11. **Governing Law.** This Settlement Agreement shall be governed by the laws of the State of Texas, as applied to agreements executed and services performed entirely in Texas. In any legal action relating to this Settlement Agreement, the Parties and their affiliates, agree and consent to the exercise of, and submit themselves to, the jurisdiction of State District Court of Travis County, Texas.
  12. This Settlement Agreement 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. Counterparts may be delivered via facsimile, electronic mail (including portable document format (PDF) or any electronic signature complying with the United States Electronic Signatures in Global and National Commerce (ESIGN) Act of 2000, e.g. [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.


**[Signatures on following pages.]**

**D/B CONTRACTOR:**

**COLORADO RIVER CONSTRUCTORS**

An unincorporated joint venture between Fluor Enterprises, Inc. and Balfour Beatty Infrastructure, Inc.

**By: Fluor Enterprises, Inc., a California corporation**

By:  Digitally signed by wes67708  
Date: 2023.05.15 12:46:44  
-05'00'

By: \_\_\_\_\_  
Name: Shawn R. West  
Title: Business Line President, Infrastructure

**By: Balfour Beatty Infrastructure, Inc., a Delaware corporation**

By:  \_\_\_\_\_  
Name: Mark Konchar  
Title: President

**MOBILITY AUTHORITY:**

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

A regional mobility authority operating pursuant to Texas Transportation Code, Chapter 370

By: \_\_\_\_\_  
Name: James Bass  
Title: Executive Director

**TxDOT:**

**TEXAS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Name: Benjamin Engelhardt

Title: Director, Construction - Austin District

**FHWA:**

**FEDERAL HIGHWAY ADMINISTRATION  
UNITED STATES DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_

Name: Brett Jackson

Title: Major Projects Coordinator