

# Item 2A FINAL REVISED BACKUP

## INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (“Agreement”) is between the following three political subdivisions of the State of Texas: Hays County (“Hays County”), Travis County (“Travis County”), and the Central Texas Regional Mobility Authority (the “Authority”). Hays County, Travis County, and the Authority may be referred to collectively in this Agreement as the “parties,” and individually as a “party.”

WHEREAS, by Minute Order 83158 enacted on May 22, 1985, the Texas Transportation Commission recognized a need for an expansion of the state highway system to deal with expected traffic growth in Travis County, and designated a state highway now known as State Highway 45 (“SH 45”) to be developed in segments according to need and available funding, and in July of that year the Travis County Commissioners Court accepted Minute Order 83158 by resolution; and

WHEREAS, the Capital Area Metropolitan Planning Organization (“CAMPO”) has included a portion of SH 45 known as SH 45 Southwest (“SH 45 SW”) in the CAMPO Regional Transportation Plans adopted in 1994, 2000, 2005, and 2010; and

WHEREAS, Hays County and Travis County have acquired the right-of-way needed to build and operate SH 45 SW, and that right-of-way is currently held by the State of Texas; and

WHEREAS, many residents of Hays County travel north on FM 1626 and on Brodie Lane through the Shady Hollow neighborhood to reach Loop 1 (“MoPac”) at Slaughter Lane for access to employment, retail, and recreational destinations in Travis County, and those Hays County residents as well as local travelers suffer congestion, delays, and safety concerns on Brodie Lane which should be relieved by SH 45 SW; and

WHEREAS, in June, 2013, the Texas Department of Transportation (“TXDOT”) initiated and is currently leading an environmental study for the area between MoPac and FM 1626 that is planned for SH 45 SW, with a completion date anticipated in early 2015 for the resulting state environmental impact statement (the “state EIS”); and

WHEREAS, subject to the state EIS, the Authority proposes to design and construct a new four-lane state highway consisting of four tolled main lanes of controlled access roadway, with a possible shared-use path on one side, extending approximately 3.6 miles from MoPac to FM 1626, as supported by the October 22, 2013, resolution of the Travis County Commissioners Court (the “Project”); and

WHEREAS, the parties anticipate and intend that all costs incurred by the Authority to complete the Project will be paid from funds provided by Travis County, Hays County, and TXDOT; and

WHEREAS, together with TXDOT, Travis County and Hays County have agreed to fund not-to-exceed portions of the costs of the Project as detailed in this Agreement, and the Authority has agreed to manage the design, procurement, and construction of the Project as detailed in this Agreement; and

WHEREAS, the parties, as political subdivisions of the State of Texas, intend for this Agreement to conform in all respects with the provisions of the Interlocal Cooperation Act, Texas Government Code Section 791.001, et seq.;

NOW, THEREFORE, the parties agree as follows:

**1. FINANCIAL OBLIGATIONS.**

(A) Hays County shall provide funding for the Project in the total amount not-to-exceed Five Million and no/100 Dollars (\$5,000,000.00 USD). Of that not-to-exceed amount, Five Hundred Thousand and no/100 Dollars (\$500,000.00 USD) shall be paid to the Authority by June 30, 2014. The remaining Four Million, Five Hundred Thousand and no/100 Dollars (\$4,500,000.00 USD) shall be paid to the Authority no later than twenty (20) days after the date the Authority provides written notice to Hays County and Travis County that the Authority intends to issue the bid solicitation for construction of the Project no later than forty (40) days after the date of that notice.

(B) Travis County shall provide funding for the Project in a total amount not-to-exceed Fifteen Million and no/100 Dollars (\$15,000,000.00 USD). An initial payment of Two Million, Five Hundred Thousand and no/100 Dollars (\$2,500,000 USD) will be paid by June 30, 2014. Travis County will use all reasonable efforts to complete the issuance of State Highway Bonds (or other debt instruments) by October 30, 2014. Subject to the issuance of such bonds or other debt instruments, Travis County shall pay the remaining Twelve Million Five Hundred Thousand and no/100 Dollars (\$12,500,000.00 USD) to the Authority by October 30, 2014. Should Travis County be unable to secure the funding and pay it to the Authority, any party may terminate this Agreement and the Authority shall return to each County, on a pro rata basis, all funds remaining in the Trust Accounts after the Authority has completed paying all expenditures for Project costs made in furtherance of this Agreement.

(C) Each County acknowledges that the Authority will make contractual obligations related to development of the Project in reliance on the funding commitments set forth herein. Such obligations will be consistent with the Budget and shall be in furtherance of the development of the Project.

(D) The Authority's contribution to Project costs are certain in-kind services provided by staff of the Authority under this Agreement. The parties contemplate additional contributions of funds sufficient to complete the Project from TXDOT. All monies paid by Travis County and Hays County shall be held in trust and utilized by the Authority only in furtherance of this Agreement. Monies spent to pay Project costs incurred to develop and construct the Project as identified by the Budget, or to reimburse any Project costs previously paid by the Authority from other funds, shall be considered expenditures in furtherance of this Agreement.

(E) The Authority will develop and provide to Travis County and Hays County a detailed budget for estimated cost of completing the Project, and will include a cash disbursement projection for those costs (the "Budget"). The Budget will include the following costs to be paid by the Authority to outside consultants, vendors, and the successful bidder on the construction contract for the Project:

- (i) pre-development engineering;
- (ii) preliminary engineering;
- (iii) capital costs (design and construction);
- (iv) engineering oversight (including design reviews, construction management, materials testing, inspection);
- (v) legal (including any costs of litigation), administrative, and other fees and expenses related to this Agreement, procurement, and Project development and oversight;
- (vi) environmental approvals, if required;
- (vii) public notices and involvement activities;
- (viii) utility relocations;
- (ix) contingencies, including change orders that may occur during the course of the Project and possible contractor claims at the end of the Project; and
- (x) all other costs reasonably projected as necessary to complete the Project, excluding the cost of the Authority's in-kind services provided through an employee of the Authority.

(F) All funds paid to the Authority by each County shall be deposited and held by the Authority in separate, interest-bearing trust accounts for the payment of Project costs (the "Trust Accounts"). Interest earned on any accumulated cash balances in the Trust Accounts shall be deposited monthly into the Trust Accounts and shall accrue to the benefit of the respective County's Trust Account. Interest may be used for the payment of Project costs if the Project is constructed, but must be returned to the County along with the unspent principal funds, if the Project is not substantially complete by June 30, 2024. Neither Hays County nor Travis County, once they have fully delivered their funding as described in subsections 1(A) and 1(B), shall be obligated for additional funding. The Authority shall be responsible for arranging all other necessary funding to achieve the completion of the Project.

(G) The Authority may disburse funds from the Trust Accounts in accordance with the Budget to pay its outside contractors and to pay the contract price for construction of the Project to the bidder selected for the contract. No later than two (2) days after making any disbursement from the Trust Accounts, the Authority will provide to each County a copy of the disbursement, together with sufficient information to establish that the disbursement complies with this Agreement.

(H) The Authority shall keep and maintain records to document and support that each disbursement made by the Authority is for an authorized purpose under this Agreement. All funds received and/or expenditures made by the Authority related to development and construction of the Project shall be subject to review by the Hays County and/or Travis County, at the requesting County's sole expense.

(I) The Authority recognizes that Travis County will use State Highway Bonds or other forms of debt instruments to fund its contribution payments.

## **2. PROJECT DEVELOPMENT.**

(A) The State of Texas owns all necessary right-of-way for the Project. The Authority will arrange with TXDOT for use of the right-of-way.

(B) The Authority's design, plans, and specifications for the Project shall comply with design and construction, materials testing, and inspection standards established or followed by TXDOT and the Authority, including but not limited to those for stormwater management and requirements established by the final state environmental impact statement (the "FEIS"), unless otherwise agreed by the parties by amending this Agreement (the "Standards"). Should the FEIS conclude that the Project is not approved for construction, the Authority will return all then remaining unspent funds and terminate the Agreement, provided that nothing herein will preclude the Authority from expending funds prior to the FEIS determination if such expenditures are consistent with the Budget and in furtherance of this Agreement. In this subsection, reference to "unspent funds" shall mean the funds remaining in the Trust Accounts thirty (30) days after the date notice of the availability of the FEIS is published in the *Texas Register* under 43 *Texas Administrative Code* Rule §2.103(g).

(C) The Authority will manage the design and construction of the Project pursuant to the Standards, including (i) preliminary estimates, (ii) development of the engineering design, plans and specifications for all roadway improvements, (iii) surveying, (iv) construction, and (v) inspection and testing.

(D) TXDOT, in coordination with the Authority and appropriate regulatory agencies, is responsible for producing the documents and analysis required for any required permitting and environmental documentation and clearances associated with the Project. The Authority in coordination with TXDOT shall apply for and obtain any permits and other required clearances issued by a state or local government agency other than the County.

## **3. PROJECT MANAGEMENT.**

(A) The Authority's Executive Director or his designee (the "Authority Representative") will act on behalf of the Authority with respect to the Project. The Authority Representative will coordinate with each County as necessary, receive and transmit information and instructions, and will have complete authority to interpret and define the Authority's policies and decisions with respect to the Project in accordance with this Agreement. The Authority will designate a Project Manager and may designate other representatives to transmit instructions and act on behalf of the Authority with respect to the Project.

(B) The Commissioners Court of Travis County and of Hays County shall each appoint a person (the "County Representative") to act on behalf of each County with respect to the Project in accordance with this Agreement; to coordinate with the Authority as necessary; and to receive and transmit information and instructions under this Agreement. The County Representative will have complete authority to interpret, define, and communicate to the Authority their respective County's policies, recommendations, and decisions related to the Project in accordance with this Agreement. By written notice delivered under this Agreement, the County Representative may

designate a County Project Manager or Co-Managers and may designate other representatives to transmit instructions and act on behalf of their respective Counties related to the Project.

(C) The Authority and the Counties, through their designated representatives and project managers (and co-managers), shall communicate on a regular basis concerning the Project. The County Representatives (and Project Managers) may provide input regarding Project development issues, however as the owner operator of the Project the Authority will make all Project development related decisions in its sole discretion.

(D) The Authority shall notify Travis County and Hays County in writing upon substantial completion of the Project. "Substantial completion" may be defined in the contract between the Authority and its contractor responsible for construction of the Project, but in general shall mean the time at which the Project can be opened to traffic notwithstanding the need to complete other Project-related items that do not impede or impair traffic.

(E) Upon the earlier of: (i) 30 days after the Authority has applied and expended in accordance with this Agreement all funds paid to the Authority by either County, plus accrued interest thereon; or (ii) 30 days after final acceptance of the Project construction by the Authority, the Authority shall render a final written accounting to that County of any and all costs paid, to be paid, credited, or refunded to or from that County's Trust Account established under this Agreement, taking into account amounts that County has paid into the Trust Account as provided herein. Each County shall have the right to audit the Authority's records at that County's expense, and shall request any such audit, or any adjustments or corrections, no later than ninety (90) days after its receipt of the accounting. The Authority shall refund any amounts due to a County no later than twenty (20) days after delivery of the adjusted final accounting.

#### **4. DISPUTE RESOLUTION**

(A) Negotiation. The parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Agreement. If a controversy or claim should arise, the parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other parties are notified of any change in the designation of its Representative.

(B) Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other parties. In the event that such a request is made, the parties agree to participate in the mediation process. The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the

Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties. Unless the parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in *Tex. Civ. Prac. and Rem Code* §154.073, unless the parties agree, in writing, to waive the confidentiality.

## **5. DEFAULT; REMEDIES; TERMINATION.**

(A) A party may terminate this Agreement if any other party defaults in its obligation and, after receiving notice of the default and of the non-defaulting party's intent to terminate, fails to cure the default no later than thirty (30) days after receipt of that notice.

(B) This Agreement will terminate on the later of: (i) thirty-one (31) days following the Counties' receipt from the Authority of final written accountings under subsection 3(D), if the Counties did not timely request an audit of the Trust Account under that subsection, or (ii) if either County requests an audit under subsection 3(E), the date the Authority and that County have resolved all disputes, if any, concerning the expenditure of funds paid by that County into its Trust Account in accordance with the terms of this Agreement.

## **6. MISCELLANEOUS.**

(A) Force Majeure. Whenever a period of time is prescribed by this Agreement for action to be taken by any party, the party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(B) Notice. All notices, demands or other requests, and other communications required or permitted under this Agreement or which any party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving party, or (ii) or (ii) receipt of a facsimile or electronic mail transmission (the latter of scanned documents in formats such as .pdf or .tif) for which confirmation of receipt by the other party has been obtained by the sending party:

AUTHORITY: Wesley M. Burford, Director of Engineering  
Central Texas Regional Mobility Authority  
3300 N. IH-35, Suite 300  
Austin, TX 78705  
(512) 966-9784 (facsimile)  
Email address: [wburford@ctrma.org](mailto:wburford@ctrma.org)

WITH COPY TO: Andrew Martin, General Counsel  
Central Texas Regional Mobility Authority  
3300 N. IH-35, Suite 300  
Austin, TX 78705

(512) 225-7788 (facsimile)  
Email address: [amartin@ctrma.org](mailto:amartin@ctrma.org)

HAYS COUNTY: Mark Jones, Commissioner Precinct 2  
P.O. Box 1180  
5458 FM 2770  
Kyle, TX 78640  
(512) 268-1250 (facsimile)  
Email address: [mark.jones@co.hays.tx.us](mailto:mark.jones@co.hays.tx.us)

WITH A COPY TO: Mark Kennedy  
General Counsel for Hays County  
111 E. San Antonio, Suite 202  
San Marcos, TX 78666  
Email address: [mark.kennedy@co.hays.tx.us](mailto:mark.kennedy@co.hays.tx.us)

TRAVIS COUNTY: Steve Manilla, County Executive  
Travis County Transportation and Natural Resources Department  
700 Lavaca Street, Suite 700  
Austin, TX 78767-1748  
(512) 854-4697 (facsimile)  
Email address: [steven.manilla@co.travis.tx.us](mailto:steven.manilla@co.travis.tx.us)

WITH A COPY TO: John Hille, Director, Transactions Division  
Travis County Attorney's Office  
314 West 11th Street, 5th floor  
Austin, TX 78701  
(512) 854-4808 (facsimile)  
Email address: [john.hille@co.travis.tx.us](mailto:john.hille@co.travis.tx.us)

(C) Calculation of Days. Each reference in this Agreement to a day or days refers to a day that is not a Saturday, Sunday, or a legal holiday observed by a County or the Authority. If the last day of any period described in this Agreement is a Saturday, Sunday, or such legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or such legal holiday.

(D) Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter thereof and contains all of the covenants and agreements between the Parties with respect to said matter.

No modification concerning this Contract shall be of any force or effect, excepting a subsequent modification in writing signed by the Party to be charged. NO OFFICIAL, REPRESENTATIVE, AGENT, OR EMPLOYEE OF HAYS COUNTY OR TRAVIS COUNTY HAS ANY AUTHORITY TO MODIFY THIS CONTRACT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR PURSUANT TO EXPRESS AUTHORITY TO DO SO GRANTED BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, AND TRAVIS COUNTY, TEXAS, RESPECTIVELY.

(E) Modification; Waiver. No amendment of this Agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

(F) Effective Date. This Agreement will become effective when signed by Travis County, Hays County, and the Authority. The date of this Agreement will be the date this Agreement is signed by the last party to sign it, as indicated by the date associated with that party's signature.

(G) Counterparts. If the parties sign this Agreement in several counterparts, each will be deemed an original but all counterparts together will constitute one instrument.

(H) Other Instruments. The parties shall execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(I) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

**HAYS COUNTY:**

**TRAVIS COUNTY:**

\_\_\_\_\_  
Bert Cobb, M.D.  
Hays County Judge  
Date: March \_\_\_\_, 2014

\_\_\_\_\_  
Samuel T. Biscoe  
Travis County Judge  
Date: March \_\_\_\_, 2014

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY:**

\_\_\_\_\_  
Mike Heiligenstein  
Executive Director  
Date: March \_\_\_\_, 2014