CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **City Manager**

AGENDA DATE: **January 24, 2012**

CONTACT PERSON/PHONE: William F. Studer, Jr., Deputy City Manager, 915-541-4252

DISTRICT(S) AFFECTED: **All Districts**

SUBJECT: Consider and take appropriate action with respect to a Resolution authorizing the execution and delivery of certain agreements relating to transportation projects within Transportation Reinvestment Zone Number Two; resolving other matters related thereto; and providing an effective date.

BACKGROUND / DISCUSSION: In furtherance of the 2008 Comprehensive Mobility Plan with the Camino Real Regional Mobility Authority (CRRMA) and the Texas Department of Transportation (TxDOT), the City agreed to provide a portion of the funds necessary for the completion of the Americas Interchange and Zaragoza Direct Connector Projects through the creation of the City's Transportation Reinvestment Zone #2. The original legislation governing the use of funds generated by a transportation reinvestment zone (TRZ) required a pass-through component to any such project. A legislative change in law has deleted that requirement and the parties now desire to remove pass-through financing from the Americas Interchange and Zaragoza Direct Connector Projects. Because the Americas Interchange Project has already begun, there are some additional technical changes which need to be made to certain additional documents. The attached resolution authorizes the execution of the following documents to implement the change in funding approach for the two referenced projects: (i) 1st Amendment to TRZ #2 Agreement; (ii) Termination of the Pass-Through Financing Agreement; and (iii) 4th Amendment to the Americas Interchange Project Development Agreement.

PRIOR COUNCIL ACTION: The Council approved the assignment of TRZ #2 generated funds to the CRRMA for both referenced projects through the TRZ #2 Agreement on June 29, 2010 and authorized the execution of the Americas Interchange Pass-Through Toll Agreement on July 6, 2010.

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION: The CRRMA and TxDOT's Boards will take action on these items on January 25, 2012 and January 26, 2012, respectively.

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required)_____ **FINANCE:** (if required)_____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

A RESOLUTION OF THE CITY OF EL PASO, TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS RELATING TO TRANSPORTATION PROJECTS WITHIN TRANSPORTATION REINVESTMENT ZONE NUMBER TWO; RESOLVING OTHER MATTERS RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of El Paso, Texas (the "City"), a body corporate and politic existing under the laws of the State of Texas, has previously established a Transportation Reinvestment Zone Number Two, City of El Paso, Texas (the "Zone") to promote transportation projects described by Section 222.104 of the Texas Transportation Code ("Section 222.104") that cultivate development and redevelopment of the Zone; and

WHEREAS, the City and the CRRMA have entered into one or more agreements (the "Pass-through Agreement") with the Texas Department of Transportation (the "Department") under Section 222.104 for the design, development, financing, construction, maintenance, or operation of certain projects located within the Zone; and

WHEREAS, on June 29, 2010, the Camino Real Regional Mobility Authority (the "CRRMA") and the City entered into an "Agreement With Respect to Transportation Reinvestment Zone Number Two" for the development and construction of one or more transportation projects within the Zone and the transfer and pledge of certain revenues for the payment of such projects (the "Original Agreement"); and

WHEREAS, as a result of a change in law and a change in anticipated funding sources for the work covered by the Pass-Through Agreement, the Department, the CRRMA and the City have mutually determined that (i) the termination of the Pass-Through Agreement is in the best interest of each of the contracting parties thereto, (ii) such termination necessitates certain technical amendments to the Original Agreement, and (iii) such termination necessitates that the City become a party to a project development agreement between the Department and the CRRMA for certain limited purposes; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. Approval of Documents. The form, terms and provisions of (i) the "Termination Of Pass-Through Agreement For Payment Of Pass-Through Tolls Agreement" in substantially the form attached hereto as **Exhibit A** (the "PTTA Termination"); (ii) the "First Amendment To Agreement With Respect To Transportation Reinvestment Zone Number Two" in substantially the form attached hereto as **Exhibit B** (the "First Amendment"); and (iii) "Amendment No. 4 To Project Development Agreement" in substantially the form attached hereto as **Exhibit C** (the "Amendment No. 4"); are hereby approved with such insertions, omissions and changes as shall be approved by the City Manager of the City, the execution of such documents being conclusive evidence of such approval. The City Manager of the City is hereby authorized and directed to execute such agreements and any related exhibits attached thereto and to deliver such agreements (including any necessary exhibits) to the respective parties thereto, and the City Clerk of the City is hereby authorized to affix the seal of the City to

such documents as required therein. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Original Agreement, as amended by the First Amendment.

SECTION 2. Other Actions Authorized. To extent the Department has previously approved a pass-through toll application for the direct connector project at the intersection of Loop 375 (Joe Battle Blvd.) and FM 659 (Zaragoza Rd.) (the "Zaragoza Project"), the City acknowledges that such pass-through agreement is no longer needed for such project because of the change of law and the CRRMA's other financing sources and the City hereby waives any rights it may have under such Departmental approval and affirms it will not look to the Department for pass-through toll financing on the Zaragoza Project under such prior Departmental approval. In addition, the City affirms its contractual obligation under the terms of the Original Agreement, as amended by the First Amendment, to transfer the Tax Increment and the TRZ Contract Payments in support of CRRMA Obligations issued for Projects as further described in such agreement and so as to facilitate the development of the Zaragoza Project by the Department pursuant to Section 222.108 of the Texas Transportation Code. The City Manager, the Deputy City Manager for Finance and Management Support Services, and other officers and employees of the City are hereby authorized to take all action necessary or reasonably required by the parties to the PTTA Termination, the First Amendment or Amendment No. 4 to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing certificates and other documents required to be delivered in connection with the PTTA Termination, the First Amendment or Amendment No. 4.

SECTION 3. Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the City Council of the City hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 4. Incorporation of Findings and Determinations. The findings and determinations of the City Council of the City contained in the preamble hereof are hereby incorporated by reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

SECTION 5. Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551 of the Texas Government Code, as amended.

SECTION 6. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

[Remainder of Page Intentionally Left Blank]

ADOPTED this _____ day of _____, 2012.

CITY OF EL PASO, TEXAS

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Assistant City Attorney
City of El Paso

APPROVED AS TO CONTENT:

_____
William F. Studer
Deputy City Manager
Finance and Management Support Services

EXHIBIT A

(See attachment.)

TERMINATION OF PASS-THROUGH AGREEMENT FOR PAYMENT OF PASS-THROUGH TOLLS BY DEPARTMENT

THIS TERMINATION AGREEMENT (the "Termination Agreement") is entered into between the State of Texas, the Developer, and the City of El Paso, Texas.

Contracting Parties:

The Department:	The Texas Department of Transportation
The Developer:	Camino Real Regional Mobility Authority
The City:	The City of El Paso, Texas

BACKGROUND

The Texas Department of Transportation ("Department"), Camino Real Regional Mobility Authority ("Developer"), and the City of El Paso, Texas ("City") previously entered into a Pass-Through Agreement for Payment of Pass-Through Tolls by the Department ("Pass-Through Agreement") effective as of July 23, 2010 for funding related to the design and construction of up to four direct connectors at the I-10/Loop 375 interchange, and approximately 28 miles of aesthetic improvements along the I-10 corridor. A true and correct copy of the Pass-Through Agreement is attached hereto as **Attachment A**. As a result of changes in anticipated funding sources for the work covered by the Pass-Through Agreement, the Department, the Developer, and the City have mutually determined that the termination of the Pass-Through Agreement is in the best interest of each of the contracting parties.

Therefore, in consideration of the mutual promises contained in this Termination Agreement, the Department, the Developer, and the City now agree as follows.

AGREEMENT

1. **Effective Date**
   This Termination Agreement becomes effective when signed by the last party whose signing makes the Termination Agreement fully executed.

2. **Termination of the Pass-Through Agreement**
   Pursuant to Section 15 of the Pass-Through Agreement, the Department, the Developer, and the City mutually consent to and hereby terminate the Pass-Through Agreement.

3. **Prior Actions.**
   The Department, the Developer, and the City each acknowledge and agree that no actions have occurred which would require the Department to provide funding or require any party to otherwise perform under the terms of the Pass-Through Agreement, now or in the future.

4. **No Further Effect.**
   From and after the Effective Date no party shall have any obligation to another under the terms of the Pass-Through Agreement, and the Pass-Through Agreement shall be of no

further force and effect.

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this contract.

Texas Department Of Transportation	Camino Real Regional Mobility Authority Developer's Name
Authorized Signature	Authorized Signature
Type Or Printed Name And Title	Raymond L. Telles, Executive Director Typed Or Printed Name And Title
Date:	Date:

THE CITY OF EL PASO

By: _____
Joyce A. Wilson
City Manager

Date: _____

APPROVED AS TO CONTENT:

William F. Studer, Jr.
Deputy City Manager
Finance & Management Support Services

APPROVED AS TO FORM:

Assistant City Attorney

469097v.4

ATTACHMENT A

Pass-Through Agreement

PTT 2009-012-01

CITY CLERK DEPT.
10 JUL -6 AM 9:31

STATE OF TEXAS §

COUNTY OF TRAVIS §

PASS-THROUGH AGREEMENT FOR PAYMENT OF PASS-THROUGH TOLLS BY THE DEPARTMENT

THIS AGREEMENT is entered into between the State of Texas, the Developer, and the City of El Paso, Texas under Transportation Code, §222.104.

Contracting Parties:

The Department:	The Texas Department of Transportation
The Developer:	Camino Real Regional Mobility Authority
The City:	The City of El Paso, Texas

BACKGROUND

Texas Transportation Code, §201.103, authorizes the Department to plan and to make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads. Transportation Code, §222.104, authorizes the Department to enter into pass-through agreements for the purpose of improving the state highway system. The Texas Transportation Commission has implemented this provision by enacting rules to be found at 43 TAC Chapter 5, Subchapter E. On September 24, 2009, the Texas Transportation Commission passed Minute Order 111961, authorizing the Department's executive director to negotiate a pass-through agreement with the Developer for the design and construction of up to four direct connectors at the I-10/Loop 375 interchange, and approximately 28 miles of aesthetic improvements along the I-10 corridor, hereinafter referred to as the "Projects", the location of which is shown on **Attachment A**, which is attached to and incorporated by reference in this agreement. On November 19, 2009, the Texas Transportation Commission passed Minute Order 112045, authorizing the Department to enter into a pass-through agreement with the Developer in furtherance of the Projects. The governing body of the Developer has authorized entering into this agreement by resolution dated June 30, 2010, which is attached to and incorporated by reference in this agreement as **Attachment E**. The City Council of the City of El Paso has authorized entering into this agreement by resolution dated July 6, 2010, which is attached to and incorporated by reference in this agreement as **Attachment E-1**. In consideration of the mutual promises contained in this agreement, the Department, the Developer, and the City now agree as follows.

AGREEMENT

1. **Effective Date**
   This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed.

2. **Amendments**
   Amendments to this agreement must be in writing and executed by all parties.

3. **Scope of Work**

I-10/Loop 375 Interchange Improvement Project: The scope of work consists of the design and construction of up to four direct connect ramps that will provide continuous traffic flow between the main lanes of the two freeways. The scope of work is described in more detail in **Attachment B**, Scope of Work and, the Project Development Agreement between the Department and the Developer, dated November 19, 2009 and as amended effective March 8, 2010 and July 26, 2010, hereinafter collectively referred to as the "I-10/Loop 375 Project Development Agreement", a copy of which is attached as **Attachment G**. Both Attachments are incorporated by reference in this agreement.

I-10 Aesthetics Project: This project generally consists of aesthetic improvements to the I-10 corridor in the El Paso region, which shall include various aspects that may include, but are not limited to, public art, decorative fencing, landscaping, and hardscaping. The scope of work is described in more detail in **Attachment B**. The parties will agree on an aesthetics master plan, as described in Attachment B. Once the parties have agreed on a plan, the parties will execute an amendment to this agreement attaching the plan to the agreement as Attachment B-1, and incorporating the plan by reference into this agreement. The amendment will provide that notwithstanding anything contained in this agreement to the contrary, the Aesthetics Project shall mean the project or projects, collectively, described in the aesthetics master plan.

4. **Sources and Uses of Funds**

a. The total estimated cost of the Projects is shown in **Attachment C**, which is attached to and incorporated by reference in this agreement. **Attachment C** includes expected cash contributions from each source of funding. The Department will pay for only those Project costs that have been approved by the Texas Transportation Commission.

If the Developer will perform any work under this agreement for which reimbursement will be provided by or through the State, the Developer must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Developer shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Developer or an employee of a firm that has been contracted by the Developer to perform oversight of the Project. The State in its discretion may deny reimbursement if the Developer has not designated a qualified individual to oversee the Project.

b. The Department is responsible only for securing the funding specifically identified as the responsibility of the Department on **Attachment C** and for making that funding available to the Developer as set forth on **Attachment C**. The Department will reimburse the Developer for costs incurred in the proportions identified on **Attachment C** for that activity. Unless and to the extent that this agreement is amended, the Department will not be responsible for funding in excess of the maximum identified on **Attachment C**.

c. The Developer shall be responsible for all costs associated with the Projects that are not shown as the responsibility of the Department. The Developer shall be responsible for all overruns in excess of the estimated cost shown in **Attachment C**.

d. The City shall be responsible for establishing a transportation reinvestment zone, depositing tax revenue from the zone into a tax increment fund, and transferring to the Developer for use on the I-10/Loop 375 Interchange Improvement Project all monies then held in the tax increment fund. In accordance with the terms of an Agreement With Respect To Transportation Reinvestment Zone Number Two by and between the City of El Paso, Texas and the Camino Real Regional Mobility Authority, dated June 29, 2010 (the "TRZ Agreement"), the City shall also be responsible for payment of certain contractual obligations incurred by the Developer in its financing of the I-10/Loop 375 Interchange Improvement Project as described in the TRZ Agreement. The City's responsibilities under this agreement are limited to the obligations described in this paragraph and shall be performed in accordance with and subject to the TRZ Agreement, a copy of which is attached as **Attachment H** and incorporated by reference in this agreement.

e. The Department may audit the project at any time. Upon completion of either or both of the Projects, the Department or an independent auditor approved by the Department, at the Department's option, may perform an audit of the Projects costs. Any funds due to the Developer, the Department, or others shall be paid by the owing party within thirty (30) days after notification that funds are due.

f. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

5. Project Implementation

a. Unless otherwise specified in this agreement, all actions required of the Developer shall be taken by the Developer's Program Manager, who shall be an individual designated by name by the Developer. Because there are two Projects receiving funding under this agreement there may be two Program Managers designated by the Developer. The Developer's Program Manager shall be authorized by the Developer to perform all or specified aspects of the Project development and implementation. Evidence of authorization shall be submitted to the Department immediately after the effective date of this agreement. The Developer's Program Manager may delegate responsibility to another person in a writing provided to the Department. The Developer must notify the Department in writing as soon as possible, but no later than three (3) business days after authorizing a change in Program Managers.

b. Unless otherwise specified in this agreement, all actions required of the Department shall be taken by the Department's district engineer for the El Paso District. The district engineer will designate an engineer (the TxDOT Engineer), who will be assisted by other Department personnel, to oversee and monitor compliance with all responsibilities under this agreement including all phases of project development. The district engineer may delegate responsibility to the TxDOT Engineer or another person in a writing provided to the Developer. Whenever this agreement requires an action to be taken by the Department's executive director, that responsibility may be delegated to another Department employee who is not below the level of district engineer. On request, the

Department will provide the Developer with a copy of the executive director's delegation of authority.

c. The roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project are defined in **Attachment D**, which is attached to and incorporated by reference in this agreement.

6. Environmental Assessment and Mitigation

I-10/Loop 375 Interchange Improvement Project:
Roles and responsibilities for the Department and Developer in connection with environmental assessment and mitigation on the I-10/Loop 375 Interchange Improvement Project shall be performed in accordance with and subject to the terms of the I-10/Loop 375 Project Development Agreement.

I-10 Aesthetics Project:
Development of the I-10 Aesthetics Project shall comply with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, 43 TAC §2.50, and Natural Resources Code, Chapter 191.

a. The Developer is responsible for the identification and assessment of any environmental problems associated with the development of the Project to the extent permitted by law.
b. The Developer is responsible for the cost of all environmental permitting, mitigation, remediation, and compliance.
c. The Developer is responsible for preparing for and providing all public meetings or public hearings required for development of the environmental decision and for summary and analysis of all public meetings or public hearings. When applicable, the Developer is also responsible for certifying that a public hearing has been held in accordance with applicable rules, the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987. Public hearings may not be held before environmental documents are approved for further processing and may not be held before approval of all highway schematics for the particular project.
d. The Developer is responsible for the preparation of all documents required for the environmental clearance of the Project. The Department shall promptly review and process the documents submitted by the Developer in order to receive environmental clearance as soon as is reasonably possible
e. The Developer shall submit all requests for permits, all reports, and all findings relating to the Natural Resources Code, Chapter 191, through the Department. The Developer shall provide the Department with final drafts of all necessary requests for permits, reports, and findings required by law. The Department is responsible for all coordination under those acts and for making all necessary filings with the appropriate agencies and the Department will provide copies of those filings to the Developer. The Developer is responsible for obtaining all other permits and is responsible for obtaining all permits and approvals resulting from changes that occur after environmental approval is first obtained, except as otherwise required by law or by agreement between the Department and a state or federal agency.
f. Before construction is begun, the Developer shall provide the Department with written certification that all required permits and commitments are complete. The Developer

shall provide the Department with copies of all permit applications and approvals from each regulatory agency with environmental jurisdiction over the Project.

g. All environmental reports and findings shall comply with the latest version of the Department's manuals. The Developer shall provide the Department with physical and electronic copies of all environmental documentation in a format approved by the Department.

7. Right of Way and Real Property

I-10/Loop 375 Interchange Improvement Project:
Roles and responsibilities for the Department and Developer in connection with right of way and real property on the I-10/Loop 375 Interchange Improvement Project shall be performed in accordance with and subject to the terms of the I-10/Loop 375 Project Development Agreement.

I-10 Aesthetics Project:

a. Although acquisition of real property is not anticipated in connection with the Aesthetics Project, if real property acquisition is required the Developer shall be responsible for such acquisition. In the event real property is acquired, no acquisition activity will occur until the Developer and the Department develop a programmatic procedure governing the acquisition. Furthermore, all property interests shall be acquired in the name of the State of Texas. The Developer may not acquire right of way until all environmental clearance procedures have been completed and either (1) right of way maps and property descriptions (field notes and plats) have been prepared or (2) a segment of the right of way map (consisting or one or more contiguous parcels) and the field notes and plat maps for such parcel(s) have been prepared and certified to fall within the right of way limits of the approved schematic. The Developer must comply with all applicable state and federal laws, regulations, policies, and procedures, including the requirements of the Right of Way Manual Collection of the Department's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq. Documentation to support compliance must be maintained by the Developer. The Developer must obtain advance approval from the Department for any variance in established procedures. The Department's executive director may exercise discretion in authorizing an alternative procedure if it is sufficient to discharge the Department's responsibilities for acquiring real property. The Department may monitor and audit the Developer's acquisition of right of way on the Project at any time. On request, the Developer shall furnish the Department with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If the Department determines that right of way maps, field notes, parcel plats, appraisals, access designations, acquisition documentation, relocation assistance benefits, or any other acquisition requirement is not in compliance with this agreement, the Developer shall take all necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Developer.

b. The Developer is responsible for any required relocation assistance along the route of the right of way as may be determined to be eligible under the relocation assistance program. The relocation assistance plan must provide reasonable time frames for orderly relocation of residents and businesses being displaced by the Project. All costs

associated with the relocation assistance, including payments to displacees, will be assumed by the Developer.

8. Utilities

I-10/Loop 375 Interchange Improvement Project:
Roles and responsibilities for the Department and Developer in connection with utilities on the I-10/Loop 375 Interchange Improvement Project shall be performed in accordance with and subject to the terms of the I-10/Loop 375 Project Development Agreement.

I-10 Aesthetics Project:
If the I-10 Aesthetics Project requires the adjustment, removal, or relocation of existing utilities, the Developer shall be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments. The Developer shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including 43 TAC §21.31 et seq. (Utility Accommodation); and 23 CFR Chapter 1, Part 645. The Developer shall be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities. Before a construction contract for the Project is let, a utility certification must be made available to the Department stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

9. Architectural and Engineering Services

I-10/Loop 375 Interchange Improvement Project:
Roles and responsibilities for the Department and Developer in connection with architectural and engineering services on the I-10/Loop 375 Interchange Improvement Project shall be performed in accordance with and subject to the terms of the I-10/Loop 375 Project Development Agreement.

I-10 Aesthetics Project:
The Developer has responsibility for the performance of architectural and engineering services, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed in design of the I-10 Aesthetics Project and carried out during construction of the Project. The engineering plans shall be developed in accordance with the latest version of the Department's manuals. The Department's executive director may exercise discretion in authorizing alternative criteria or granting exceptions to this requirement on a case-by-case basis if a particular criterion could not reasonably be met because of physical, environmental, or other relevant factors and if the proposed design is a prudent engineering solution. The Developer shall utilize its General Engineering Consultant (the GEC) and its subconsultants for the completion of all professional services. The GEC was selected through a competitive process in compliance with Government Code Chapter 2254, Subchapter A and all federal requirements including those cited in 23 CFR Part 172 and those relating to participation by disadvantaged business enterprises (DBEs), the Americans with Disabilities Act, and environmental matters. The Department was involved in and approved of the selection process utilized in the Developer's selection of the GEC. The City may provide the services of an artist in the development of the I-10 Aesthetic

Project, in which case the City shall comply with an and all applicable laws and regulations necessary for the selection of artists. Use of additional service providers in the completion of the Project shall be accomplished in accordance with all applicable laws and regulations. Access to the facility shall be in compliance with the Department's access management policy.

10. Construction Responsibilities

I-10/Loop 375 Interchange Improvement Project:
Roles and responsibilities for the Department and Developer in connection with construction responsibilities on the I-10/Loop 375 Interchange Improvement Project shall be performed in accordance with and subject to the terms of the I-10/Loop 375 Project Development Agreement. The Department and Developer will use the process described below in Subparagraph h for establishing traffic count data on this Project.

I-10 Aesthetics Project:

a. The Developer shall advertise for construction bids, issue bid proposals, receive and tabulate bids, and award and administer the contract for the design and construction of the I-10 Aesthetics Project, when required by applicable statutes or regulations. Administration of the contract includes the responsibility for construction engineering, material acceptance testing and construction quality acceptance, when applicable, and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary after the award of the construction contract. The bidding process must be competitive and must comply with all applicable federal and state laws. The Project and bidding process as well as the commencement of any construction must be authorized by applicable State and Federal agencies in advance.
b. The Developer has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, mitigation, and commitments are adequately addressed, of assessing potential environmental effects of contract revisions, and of obtaining environmental permits, issues, coordination, mitigation, and commitments that may be required by contract revisions.
c. Contract revisions including change orders shall comply with the latest version of all national and state administrative criteria and manuals. No contract revision may be made without the prior written approval of the Department's executive director if it would affect prior environmental approvals, significantly revise the scope of the Project or the geometric design, or change the cost to the Department. Procedures governing approval are contained in **Attachment D**, which is attached to and incorporated by reference in this agreement.
d. The Department may conduct any and all oversight activities it deems reasonably necessary or advisable to ensure compliance with this agreement and all state and federal requirements. The TxDOT Engineer or designee may attend the Developer's construction status meetings and long-term strategy meetings, and may visit the Project periodically and as reasonably necessary to comply with oversight requirements.
e. When the Project is complete, the Developer shall issue and sign a "Notification of Completion" certifying that all work has been completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after receipt of this notification, the Department will perform a

final inspection and provide the Developer a list of items, if any, to be completed prior to acceptance by the Department. Once the items have been addressed to the satisfaction of the Department, the Department will issue a "Letter of Acceptance" to the Developer. Within six (6) months after the Department has issued the "Letter of Acceptance," the Developer shall file with the Department a set of as-built plans that incorporate any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas, who shall certify that the Project was constructed in accordance with the plans and specifications.

f. The Developer is responsible for providing adequate inspection to ensure its contractor's compliance with the provisions of this agreement. At any time the Department may audit the construction process to ensure the adequate inspection of construction and may conduct its own inspection of construction.

g. The parties to this agreement shall comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form FHWA-1273 in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Part B.]

h. The Developer and the Department, through representatives of the El Paso District, shall mutually agree on a reasonable means for obtaining traffic count data recognizing, the amount of the funding committed hereunder and the maximum duration of the reimbursement period. Once a count is obtained the local district office will verify and approve the invoice based thereon and will prepare a reimbursement pay form to be submitted to the Department, Finance Division, Accounting Management Section, at least thirty (30) days before the payment is due to the Developer.

11. Maintenance

The Department shall be responsible for maintenance of the Projects after completion of the work.

12. Repayment

a. The Department will reimburse the Developer by paying an annual amount equal to $0.055 for each vehicle that travels on the Projects during the previous year, provided that under no circumstances will the annual payment be less than $2,000,000 or more than $3,000,000, and under no circumstances will the total payment under this Paragraph during the course of this agreement exceed $5,000,000 for the I-10/Loop 375 Interchange Improvement Project and $5,000,000.00 for the I-10 Aesthetics Project unless approved by the parties and formalized in a written amendment to this agreement. The number of vehicles traveling on the Projects during a year will be based on actual traffic data, to the extent the data is available, or the Department's traffic estimates in accordance with Paragraph 10.

b. For purposes of repayment under this agreement, "Substantial Completion" for the I-10/Loop 375 Interchange Improvement Project is defined in the I-10/Loop 375 Project Development Agreement. When the I-10/Loop 375 Interchange Improvement Project is Substantially Complete, the Developer may issue and sign a "Notification of Substantial Completion" certifying that all work has been substantially completed in accordance with the requirements of this agreement, all governmental approvals, and applicable law. Within thirty (30) days after receipt of this notification, the Department will perform an inspection and provide to the Developer a list of items, if any, to be completed prior to approval by the Department. Once the items have been addressed

to the satisfaction of the Department, the Department will issue a "Letter of Approval for Payment" to the Developer. For purposes of repayment under this agreement for the I-10 Aesthetics Project, the Developer shall notify the Department when a component project has been completed and, following inspection, the Department shall issue a Letter of Acceptance in accordance with Paragraph 10.

c. The first payment shall be made within sixty (60) days after the first anniversary of Substantial Completion of the I-10/Loop 375 Interchange Improvement Project and the Department's issuance of a Letter of Approval for Payment, or within sixty (60) days after the first anniversary of completion and the Department's issuance of a Letter of Acceptance for any individual aesthetic improvement project along the I-10 corridor that is part of the overall I-10 Aesthetics Project, whichever is first to occur; provided, however, that the first payment may not be made sooner than June 1, 2012. Annual payments shall continue within sixty (60) days after each succeeding anniversary of the Letter of Approval for Payment or the Letter of Acceptance as applicable. Each payment will be allocated solely to the eligible Project (either Substantial Completion of the I-10/Loop 375 Interchange Improvement Project, or completion and acceptance of an individual aesthetic improvement project of the I-10 Aesthetics Project), until both Projects are eligible; at which time payments will be allocated to each Project in the proportion of the number of vehicles traveling on each Project. After payment of $5,000,000.00 for one Project, the remaining payments will be allocated solely to the other Project until it is paid in full.

d. If the first payment occurs within sixty (60) days after the first anniversary of completion and acceptance of any individual aesthetic improvement project along the I-10 corridor as described above in Subparagraph c., and Substantial Completion of the I-10/Loop 375 Interchange Improvement Project has not occurred by that date, then notwithstanding the Department's general obligation to make an annual payment in the minimum amount of $2,000,000, the first payment may not be in an amount that exceeds the actual cost of labor and materials incurred in the development and construction of those completed and accepted individual aesthetic improvement projects. Similarly, the actual costs limitation rather than the minimum $2,000,000 annual payment obligation will apply to all succeeding annual payments that are solely related to individual aesthetic improvement projects. If all of the individual aesthetic improvement projects along the I-10 corridor that are components of the overall I-10 Aesthetics Project as described in **Attachment B** are not completed by the Developer and accepted by the Department, the total payment under this Paragraph during the course of this agreement for the I-10 Aesthetics Project will not exceed the actual cost of labor and materials incurred in the development and construction of those completed and accepted individual aesthetic improvement projects.

e. Payment under this agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds.

13. Mutual Cooperation

The Department and the Developer shall use all reasonable efforts to meet all deadlines specified in this agreement. The Department and the Developer shall use best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

14. Default

If any party fails to comply with its obligations under this agreement and such failure continues for a period of thirty (30) days or more after written notice of the breach from another party, the party failing to comply will be in default and the other party may proceed with its remedies under Paragraphs 15 and16.

15. Termination

This agreement terminates automatically when the Department has reimbursed the Developer in full. In addition, the agreement may be terminated

a. in writing with the mutual consent of the parties;
b. by any party because of a material breach by another party; or
c. by the Department if the Developer has not commenced construction of a Project within three (3) years of the date of execution of this agreement.

16. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any default, but any party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

17. Notices

All notices to a party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Developer:	Department:
Camino Real Regional Mobility Authority ATTN: Executive Director 2 Civic Center Plaza, 9th floor El Paso, TX 79901	Texas Department of Transportation Attn: John A. Barton, P.E., Assistant Executive Director for Engineering Operations 125 E. 11th Street Austin, TX 78701

City:	
City of El Paso ATTN: Joyce Wilson, City Manager 2 Civic Center Plaza El Paso, TX 79901-1153	

All notices shall be deemed given on the date delivered in person or deposited in the mail. Any party may change the above address by sending written notice of the change to the other parties. Any party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other parties.

18. Subcontracts and Assignment

a. A subcontract by Developer, its agent, or a subcontractor in excess of $10,000 shall contain all applicable terms and conditions of this agreement and be submitted to the Department for review and approval prior to its execution. The Department shall indicate its approval or rejection of a subcontract within thirty (30) days of receipt thereof, provided that if approval is denied and the Developer re-submits the

subcontract for approval after correcting any defects that led to the initial denial, the Department shall have an additional thirty (30) days to act on approval or rejection of the re-submittal.

b. Except as otherwise provided by law or this Paragraph, neither party shall assign any interest in this agreement. In the event that the Developer pledges or assigns its right to receive any revenues derived from this agreement in connection with a loan or with the issuance of bonds, the pledge or assignment shall not operate as an assignment of an interest in this agreement. In that case the Developer shall provide the Department with copies of the loan or bond documentation no less than ten (10) days before the loan is executed or the bonds are issued. Under no circumstances will the Department be liable in any way for debt in any form incurred by the Developer, and any loan or bond documentation will state clearly that the Department has no obligation of repayment.

c. No subcontract or assignment will relieve the Developer of its responsibility under this agreement.

19. Ownership of Property

After completion or termination of this agreement, all documents prepared by the Department shall remain the property of the Department. All data prepared under this agreement shall be made available to the Department without restriction or limitation on further use. All documents required to be provided to the Department shall be transmitted to the Department in the form of photocopy reproduction within a reasonable time following receipt of a request. The originals shall remain the property of the Developer. The Developer shall grant the Department an irrevocable, perpetual, nonexclusive license to use all intellectual property acquired or developed under this contract.

20. Developer Resources

All employees of the Developer shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Developer certifies that it currently has adequate qualified personnel in its employment or under contract to perform the work required under this contract or will be able to obtain adequate qualified personnel from sources other than the Department. On receipt of written notice from the Department detailing supporting factors and evidence, the Developer shall remove from the Project any employee of the Developer who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Developer shall furnish all equipment, materials, supplies, and other resources required to perform the work.

21. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other parties. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

22. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Developer shall furnish the Department with satisfactory proof of this compliance. The Developer shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

23. Legal Construction

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

24. Insurance

To the extent that this agreement authorizes the Developer or its contractor to perform any work on Department right of way, before beginning work the entity performing the work shall provide the Department with a fully executed copy of the Department's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on Department right of way. This coverage shall be maintained until all work on the Department right of way is complete. If coverage is not maintained, all work on Department right of way shall cease immediately, and the Department may recover damages and all costs of completing the work.

25. Hold Harmless

To the extent permitted by law, the Developer shall save harmless the Department and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this contract and that are caused by or result from error, omission, or negligent act of the Developer or of any person employed by the Developer. To the extent permitted by law, the Developer shall also indemnify and save harmless the Department from any and all expense, including but not limited to attorney fees that may be incurred by the Department in litigation or otherwise resisting the claim or liabilities that may be imposed on the Department as a result of such activities by the Developer, its agents, or employees.

26. Sole Agreement

Except as otherwise provided in this paragraph, this agreement constitutes the only agreement between the parties and supersedes any prior understandings or written or oral agreements concerning the agreement's subject matter. To the extent the terms of this agreement conflict with the terms of the Project Development Agreement between the Department and the Developer, dated November 19, 2009, the Project Development Agreement shall control.

27. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

28. Gratuities

Any person who is doing business with or who reasonably speaking may do business with the Department under this contract may not make any offer of benefits, gifts, or favors to employees of the Department. The only exceptions allowed are ordinary business lunches

and items that have received the advanced written approval of the Department's executive director.

29. Conflict of Interest

The Developer shall not assign an employee to the Project if the employee:

a. owns an interest in or is an officer or employee of a business entity that has or may have a contract with the Department relating to the Project;
b. has a direct or indirect financial interest in the outcome of the Project;
c. has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with the Department; or
d. is a current part-time or full-time employee of the Department.

30. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

31. Cost Principles

The parties shall comply with the cost principles established in OMB Circular A-87.

32. Procurement and Property Management Standards

The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

33. Inspection of Books and Records

The parties shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this agreement and shall make those materials available to the Department, the Developer, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending claims are resolved. Additionally, the Department, the Developer, and the FHWA shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions, including records in the possession of the Developer's agents to the extent that they relate to expenditures for which reimbursement is requested. At the request of the Department, the Developer shall submit or make available for inspection any information required by the Department in the format directed by the Department.

34. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

35. Civil Rights Compliance

The Developer shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive

Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

36. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26. The Developer's program and goals are subject to approval by the Department.

37. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Developer certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this agreement shall require any party to a subcontract or purchase order awarded under this agreement to certify its eligibility to receive Federal funds and, when requested by the Department, to furnish a copy of the certification.

38. Lobbying Certification

In executing this agreement, each signatory certifies that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Developer shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

By executing this agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

THE UNDERSIGNED PARTIES bind themselves to the faithful performance of this contract.

Texas Department Of Transportation

Authorized Signature

Amadeo Saenz, P.E., Executive Director
Type Or Printed Name And Title

Date: 7/23/10

Camino Real Regional Mobility Authority
Developer's Name

Authorized Signature

Raymond L. Telles, Executive Director
Typed Or Printed Name And Title

Date: JULY 07, 2010

THE CITY OF EL PASO

By: _____
Joyce Wilson,
City Manager

Date: 7/6/2010

APPROVED AS TO CONTENT:

William F. Studer, Jr.,
Deputy City Manager for Administration
And Financial Services

APPROVED AS TO FORM:

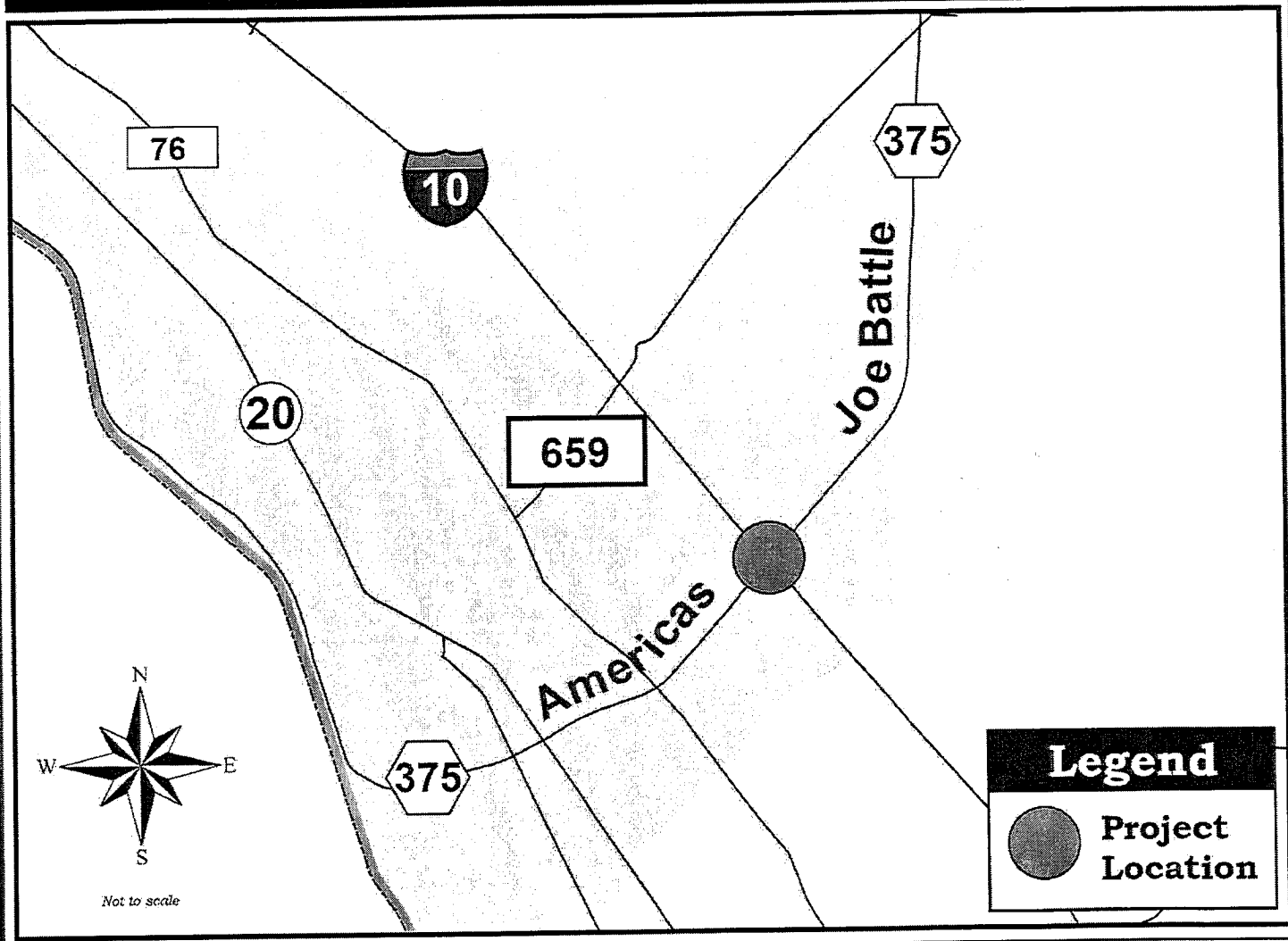
Mark Shoesmith
Assistant City Attorney

CITY CLERK DEPT.
10 JUL -6 AM 9:31

ATTACHMENT A

Location Map of Project

PROJECT LOCATION MAP
City of El Paso, Texas

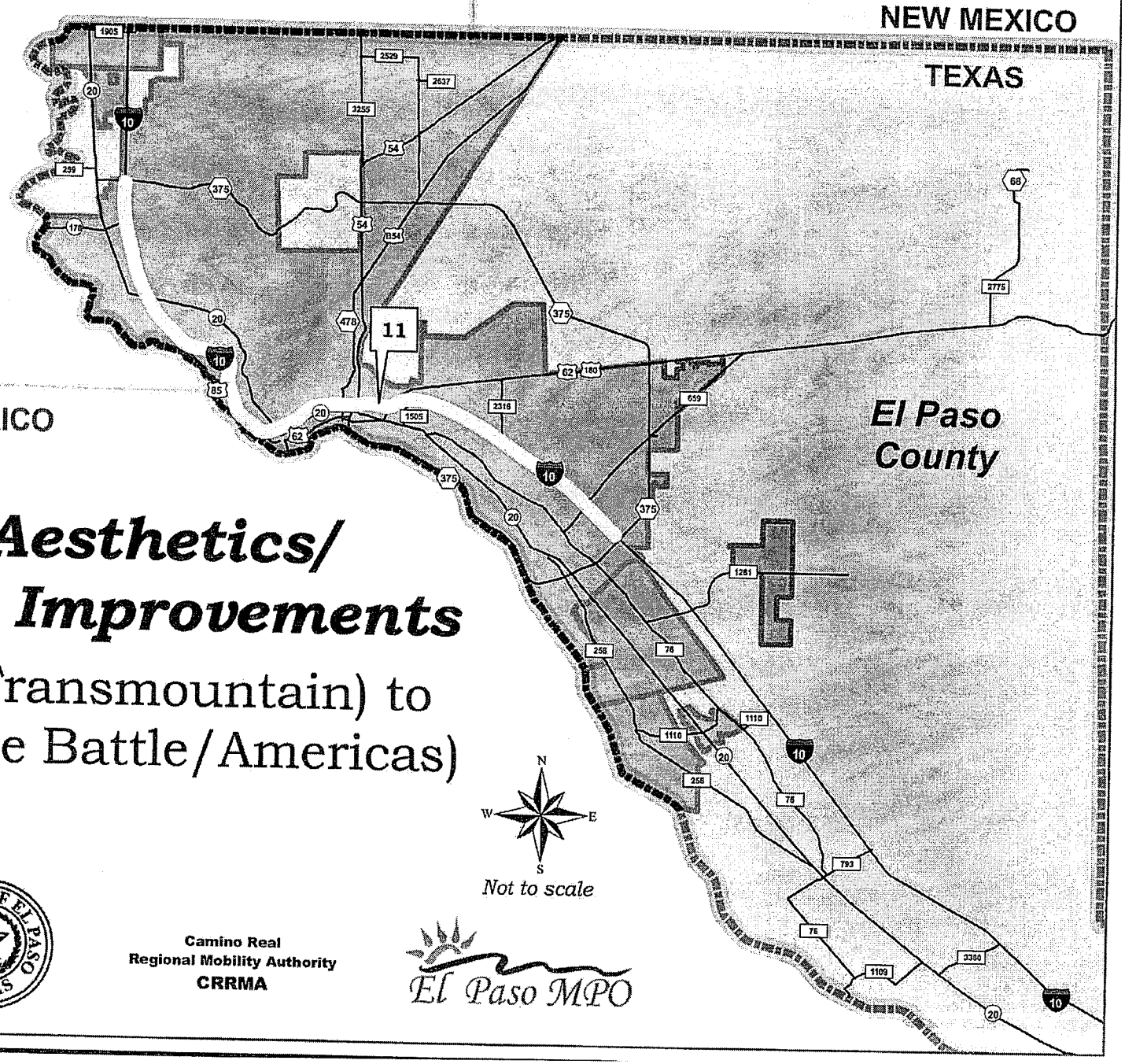


Texas Department of Transportation
EL PASO DISTRICT

CSJ 2121-04-065
I-10 @ LP 375 (Americas)
4 of 8 Connectors

Revised: July 15, 2009

2008 COMPREHENSIVE MOBILITY PLAN



I-10 Aesthetics/ Highway Improvements

LP 375 (Transmountain) to
LP 375 (Joe Battle/Americas)

Texas Department of Transportation

Revised: July 18, 2008

THE CITY OF EL PASO TEXAS

Camino Real
Regional Mobility Authority
CRRMA

El Paso MPO

ATTACHMENT B

Scope of Work

I-10/Loop 375 Interchange Improvement:

The proposed scope of work includes the design and construction of the following three, of the ultimate eight, direct connect ramps that will provide continuous traffic flow between the mainlanes of the two freeways:

1) eastbound IH 10 to northbound Loop 375

2) southbound Loop 375 to westbound IH 10, and

3) northbound Loop 375 to westbound IH 10.

All of the above will be constructed as 2-lane direct connectors except for the northbound Loop 375 to westbound IH 10 which will be constructed as a single lane direct connector. Any work on the existing mainlanes of IH 10 and Loop 375 will be limited to what is necessary to accommodate construction of the proposed three direct connectors and the relocated access ramps. Segments of both IH 10 and Loop 375 frontage roads will be realigned to accommodate the direct connectors. The scope also includes drainage revisions, including retention, necessary to accommodate construction of the three direct connectors, modification/relocation of existing and addition of proposed signage and replacement/relocation of existing and addition of proposed signage, and replacement/relocation of existing traffic and pedestrian signals.

Additionally, the proposed scope includes realigning and reconstructing any segments of the four existing cloverleaf ramps necessary to accommodate the structural elements of the three direct connectors, including any modifications to existing drainage structures and replacement of the existing highmast lighting system. The project design will complement the aesthetic treatment of the existing interchange.

The proposed work will include the acquisition of all Right of Way required to complete all eight direct connect ramps of the ultimate interchange, but will only include adjustments to utilities that are within the project limits and are impacted by the proposed construction.

Optional Scope of Work

In the event sufficient project funding is or becomes available, the following optional fourth direct connector may also be included in the scope of work:

1) westbound IH 10 to southbound Loop 375

This connector will be a 2-lane direct connector. Any work on the existing

mainlanes of IH 10 and Loop 375 will be limited to what is necessary to accommodate construction of the optional direct connector and the relocated access ramps. Segments of both IH 10 and Loop 375 frontage roads will be realigned to accommodate this connector. The scope also includes drainage revisions, including retention, necessary to accommodate construction of the direct connector, modification/relocation of existing and addition of proposed signage, replacement of the westbound frontage road bridge east of the intersection, and adjustment of any utilities in conflict with the construction of this direct connect ramp.

Additionally, the scope for the optional connector includes realigning and reconstructing any segments of the existing cloverleaf ramps necessary to accommodate the structural elements of the direct connector including any modifications to existing drainage structures and replacement of the existing highmast lighting system. The optional connector design will complement the aesthetic treatment of the existing interchange.

Notwithstanding the foregoing, if the direct connector described above is not financially feasible to develop at this time, but another of the planned future direct connectors can be developed within available financial resources, the parties may mutually agree to include a different direct connector as an optional scope of work. Specific details as to the alternate direct connector will be agreed to by the parties.

PROJECT MILESTONES

The I-10/Loop 375 interchange improvement will be open to traffic 861 calendar days after issuance of Notice to Proceed.

The entire project will be substantially complete and open to traffic 861 calendar days after issuance of Notice to Proceed.

For the purposes of this agreement, "Substantial Completion" is defined as all travel lanes open to the public as approved by the Department and no further work remaining that requires lane closures affecting the mobility of the traveling public.

ATTACHMENT B

Scope of Work

I-10 Aesthetics:

The intent of the project is to improve the aesthetic qualities and features of approximately 28 miles of the IH-10 Corridor in El Paso County. The project limits are from MP 6 (Loop 375 – Transmountain Rd.) to MP 34 (Loop 375 – Americas Ave.) There are locations along the I-10 corridor that have been identified as requiring some type of aesthetic improvement including, but not limited to, the Thorn Rd. interchange, Mesa St. (SH 20) interchange, Sunland Park Dr. interchange, Schuster Ave interchange (UTEP), downtown depressed viaduct, and overpasses, downtown rail yard, Raynolds St. interchange, Airway Blvd. interchange, and the Lee Trevino Dr. interchange. The Aesthetics project will focus on these locations and others identified as being in need of improvement through design and implementation of various types of aesthetic treatments including, but not limited to, public art installations, signage, lighting, replacement of chain link fencing with decorative fencing, landscaping, hardscaping, and any others that improve the visual appeal of the Corridor that are within applicable TxDOT and FHWA specifications. However, in recognizing the importance of consistency and uniformity along such heavily used corridor, the project contemplates the development of an aesthetics master plan. Each of the locations identified in this scope or identified in the aesthetics master plan may be developed and constructed as an individual aesthetic improvement project and considered a component of the overall Aesthetics Project.

PROJECT MILESTONES

The Aesthetic improvements will be initiated ____1_____ calendar day after issuance of Notice to Proceed.

The entire project will be complete within four (4) years after issuance of the first Notice to Proceed.

For the purposes of this agreement, "Substantial Completion" is defined as all travel lanes open to the public as approved by the Department and no further work remaining that requires lane closures affecting the mobility of the traveling public.

ATTACHMENT C

Budget

The sources and uses of funds for the two projects are as follows:

Funding Sources

Project	CSJ	Total Project Cost	Funding Sources: American Recovery and Reinvestment Act – Metropolitan Planning Organization	American Recovery and Reinvestment Act – Texas Transportation Commission	State Infrastructure Bank Transportation Reinvestment Zone	Coordinated Border Infrastructure	Cat-2	Cat-2 Pass-Through Toll	Total Funds
IH-10 / Loop 375 interchange improvements	2121-04-065	$50,000,000			$30,000,000	$15,000,000		$5,000,000	$50,000,000
	2121-04-082	$96,000,000	$21,000,000	$75,000,000					$96,000,000
	Total	$146,000,000	$21,000,000	$75,000,000	$30,000,000	$15,000,000		$5,000,000	$146,000,000
IH-10 Aesthetics	2121-01-080	$10,000,000					$5,000,000	$5,000,000	$10,000,000
	Grand Total	$156,000,000	$21,000,000	$75,000,000	$30,000,000	$15,000,000	$5,000,000	$10,000,000	$156,000,000

The Total Project Cost for the two projects is $156,000,000. TxDOT is responsible for providing $75,000,000 from the American Recovery and Reinvestment Act (ARRA) funds, $15,000,000 from the Coordinated Border Infrastructure (CBI) program, and $5,000,000 from Category 2 funds. The El Paso Metropolitan Planning Organization (MPO) will provide $21,000,000 from ARRA. The Camino Real Regional Mobility Authority is responsible for funding $30,000,000, which may be obtained through a State Infrastructure Bank loan. The remaining $10,000,000, which is the subject of this pass through toll agreement and is part of future El Paso MPO Category 2 funds, complete the funding for the implementation of the two projects.

ATTACHMENT D

Project Implementation
(for I-10 Aesthetic Project only - see attached PDA for I-10/Loop 375 Interchange Project)

Overview

Unless Department and Developer agree on a separate Project Implementation Plan which recognizes the unique aspects of the Aesthetics Project, this Attachment will define the roles, the responsibilities, and the working relationship between the Developer and the Department during the implementation of the Project.

1. Environmental Studies and Mitigation

1.1. The Developer shall complete all environmental studies and documents required to secure environmental approval, including each of the following items.

1.1.1. Preparation and completion of environmental studies, including obtaining right of entry to perform such studies. All environmental studies will be performed by environmental specialists who meet the requirements to perform those studies.

1.1.2. Submission of appropriate documentation (categorical exclusion, environmental assessment, and environmental impact statement, including reevaluation, and supplemental documentation) for Department review and approval. Department review is detailed in section 1.2 below.

1.1.3. Preparation of any document revisions.

1.1.4. Submission to the Department of copies of the environmental studies and documentation adequate for distribution.

1.1.5. Preparation of legal and public notices in accordance with 43 TAC §2.43 for Department review and use.

1.1.6. Arrangements for appropriate public involvement, including court reporters and accommodations for persons with special communication or physical needs related to the public hearing, if requested. The Department will serve as the Hearing Official at any public hearing with the assistance of the Developer.

1.1.7. Preparation of public meeting and hearing materials.

1.1.8. Preparation of any necessary responses to comments.

1.1.9. Preparation of the public meeting and public hearing summary and analysis, and the comment and response reports.

1.1.10. Submission to the Department of a verbatim transcript of any public hearing and the original certification of the pubic involvement process as described in 43 TAC § 2.43.

1.1.11. Preparation of required US Army Corps of Engineers permit applications and associated drawings for impacts to jurisdictional waters, including mitigation requirements. The Developer will be responsible wholly for any and all mitigation that would be required.

1.1.12. The Developer is responsible for all Project-related environmental permits, issues, and commitments, including any mitigation or remediation that may be required under any law or regulation.

1.1.13. Submission to the department of documentation showing that all environmental permits, issues, and commitments have been or will be completed, including copies of permits or other approvals required prior to construction in accordance with 23 CFR §771.109.

1.2. As set forth in Exhibit 1, Roles and Responsibilities, the Department will conduct environmental reviews throughout the clearance process in an attempt to receive the environmental approval of the Project.

1.2.1. Except as otherwise required by law or by agreement between the Department and a state or federal agency, the Developer is responsible for coordinating with local governmental entities and applicable agencies throughout the Project planning process to assure compliance with applicable laws. The Developer and Department will make every reasonable effort to resolve disagreements with local governments and with state or federal agencies as they relate to environmental approval of the Project.

1.2.2. The Developer will coordinate the submission of documents for Agency review with the Department.

1.2.3. The Department is responsible for coordinating all review activities listed in the review schedule defined in Exhibit 2, General Review Schedule. The Department is responsible for working with the lead agency, the cooperating agencies and any affected entities to ensure a timely and thorough coordination process through a specified staff working group. The Developer will be an integral participant throughout the review process to rapidly address comments and concerns necessary to secure clearance within the review schedule.

2. Right-of-Way Acquisition

2.1. As provided in Paragraph 7 of this agreement, the Developer is responsible for the acquisition and provision of any right-of-way or real property needed for the Project (New Right of Way).

2.2. The Developer will establish and maintain a project tracking system that is acceptable to the Department and that shows the right of way surveying and mapping, appraisal, acquisition, and relocation status of each parcel.

2.3. The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required conveyance documents and other right-of-way related deliverables required by the Department for their permanent files.

2.3.1. Within ten (10) days after commencement of work on each individual highway improvement, the Developer will confirm in writing all agreed-upon terms relating to the acquisition of right-of-way to the Department.

2.3.2. The Developer will provide the Department with a certification that it has received the Department's Right of Way Manual Collection and that it will comply with the procedures in that collection.

2.3.3. The Developer shall execute the Certificate of Compliance appended to Attachment F "Programmatic Procedures for Right of Way Oversight of Pass-Through Toll Projects" as Exhibit "A" and for each parcel to be acquired, the Developer will use checklists attached as Exhibit "B" to the Attachment F "Programmatic Procedures".

2.4. The Developer will prepare right-of-way maps, property descriptions (field notes and parcel plats), and other data as needed to describe the right-of-way and access rights necessary for the Project.

2.4.1. The field notes and parcel plats will be signed and sealed by a Registered Professional Land Surveyor currently licensed by the "Texas Board of Professional Land Surveying."

2.4.2. Copies of this data will be delivered to the Department for review at least three weeks before beginning the standard process for acquisition of right of way for each individual highway improvement.

2.5. The Developer will acquire fee simple title, any required drainage channel easements, and any required access rights, free and clear of all liens and encumbrances for all land to be used as right-of-way for the Project. Title to all real property rights will be acquired in the name of the State of Texas.

2.5.1. Title to the New Right of Way will exclude oil, gas, and sulfur from the deed without any right in the owners to ingress or egress to or from the surface of the land for the purpose of exploring, developing, drilling, or mining.

2.5.2. The Developer will also provide the Department with title insurance for each individual parcel of New Right of Way in the name of the State of Texas as the insured owner.

2.6. The Developer is responsible for the negotiation of access points at the time of acquisition based on Department's Roadway Design Manual, the Department's Access Management Manual, and the preferred access points shown on the schematic for the highway improvement.

2.6.1. The access points for each highway improvement and the access denial line as depicted on the approved schematic will be incorporated into the deed when the property is acquired. Any proposed changes to the access denial line shall be submitted to the Department for review and approval.

2.6.2. The Developer shall develop driveway permits and associated exhibits acceptable to the Department for each access point and obtain, at a minimum, three original signed copies from the respective property owners.

2.7. The Developer will ensure that all right-of-way used in constructing the Project will be free and clear of all hazardous materials and contaminants. All costs associated with the detection and remediation of the hazardous materials and contaminants shall be borne by the Developer. The Developer shall provide written documentation from appropriate regulatory agencies that all known hazardous materials and contaminants in the right of way have been adequately mitigated or that the Developer otherwise meets the requirements for regulatory closure.

2.8. The Developer will provide tracings and electronic files of right of way maps and property descriptions to the Department and will also provide the Department a final map (digital and hard copy in a format approved by the Department) showing the final location of all utility lines that were adjusted or remained in place and joint use numbers assigned to those utilities.

3. Utilities

3.1. The Developer is responsible for determining the scope of utility work if the Project requires the adjustment, removal, or relocation of a utility facility. Utilities will not be adjusted, removed, or relocated before environmental approval is secured.

3.2. The Developer is responsible for notifying the appropriate utility company to schedule adjustments.

3.3. The Department will grant the Developer or its authorized representative site access to State right of way where required to execute the work and will issue right of entry for the performance of utility relocation.

3.4. The Developer is responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the Project unless this work is provided by the owners of the utility facilities.

3.5. The Developer and the Department will, upon commencement of each individual highway improvement, agree on the form and format of all required utility agreements, including joint use acknowledgments.

4. Engineering Services

4.1. The Developer will remain the single point of contact for engineering and design issues. All correspondence and instruction to the design consultants will be the sole responsibility of the Developer.

4.2. At the commencement of an individual highway improvement, the Developer will coordinate a Design Concept Conference with the Department to establish the performance parameters and design requirements for the highway improvement, including the Pavement Design, Hydraulic Design, Design Concept Conference Forms and Typical Sections, which will remain in place throughout the implementation of the highway improvement.

4.3. All plans, specifications, and estimates developed by or on behalf of the Developer shall conform to the latest version of the Department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and the special specifications and special provisions related thereto, and shall conform to the latest edition and revisions of the Department's Roadway Design Manual. The construction plans furnished to the Department shall be reproducible tracings on mylar or equivalent.

4.4. If the Department determines that the complete plans, specifications, and estimates are unacceptable, the Developer shall correct the design documents to the Department's satisfaction. Should additional specifications or data be required by the Department, the Developer shall redesign the plans and specifications to the Department's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Developer.

4.5. If exceptions to the Department's design criteria are required as specified in the Department Roadway Design Manual, a request for exceptions shall follow the procedure set forth in that manual.

4.5.1. If it becomes necessary to change a design after it has been approved by the Department, and if that change does not require the adoption of alternative design criteria or an exception to the Department's design criteria, the Developer will coordinate with the Department and FHWA for approval of the change.

4.5.2. The Department shall have no more than 10 business days either (1) to approve the design change as proposed by the Developer or (2) to respond with a Department-recommended alternative to the design change.

4.5.3. If the Department responds with an alternative to the design change, the Developer and the Department shall work diligently to develop a mutually agreeable design solution.

4.5.4. The Department is responsible for obtaining any necessary approval from FHWA.

4.6. Reviews

4.6.1. When the design is approximately 30 percent complete, the Developer shall submit a completed pavement design to the Department. The Department may request additional information related to the pavement design, and the Developer shall provide that information promptly. The pavement design must be approved by the Department before letting. After the pavement design has been approved by the Department, it may not be changed by either party without the written consent of the other.

4.6.2. When design is 30% complete, the Developer will coordinate the submission of the following design information for a joint review session between the Developer and the Department to allow comments and concerns to be addressed by the Developer within the

expedited review schedule defined in Exhibit 2, General Review Schedule.

4.6.3. The following will be reviewed as set forth in Exhibit 1, Roles and Responsibilities.

1) Preliminary cross sections showing existing utility lines, R.O.W.
2) Plan and profile sheet showing existing and proposed:
   a) R.O.W. lines
   b) Roadway alignments and profiles
   c) Intersecting streets
   d) Curb and lane lines
   e) Existing Utilities
3) Existing and proposed typical sections including pavement section
4) Preliminary title and index sheets.
5) Preliminary drainage area map, discharge relationships and drainage calculations.
6) Storm drainage master plan.
7) Preliminary culvert layouts.
8) Preliminary bridge and bridge classification culvert layouts, including test hole information.
9) Preliminary retaining wall layout, including test hole information.
10) Sequence of work outline for traffic control.
11) Preliminary traffic control typical sections and layouts.
12) Preliminary intersection layouts.
13) Preliminary utility layouts - identify potential conflicts and exchange of information with existing utilities.
14) Update estimates and prepare preliminary roadway and drainage quantity summary sheets.
15) Updated design contract schedule.
16) Facility typical sections and pavement design.

4.6.4. When the Project design is final, the Developer will coordinate the submission of the following information to the Department for review to allow comments and concerns to be addressed by the Developer to secure approval of the Department and FHWA within the expedited review schedule defined in Exhibit 2, General Review Schedule.

1) Seven (7) copies of final plans, specifications, and engineer's estimate.
2) Revisions to the preliminary design submittal.
3) Proposal to award construction contract in compliance with applicable state and federal requirements.
4) Proposed contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals.
5) Documentation of all environmental permits, issues, and commitments that will be addressed in construction.

4.6.5. Approval by the Department of this final design submittal will constitute authorization for the Developer to advertise for construction bids.

4.6.6. For any individual highway improvement with a construction cost over $25 million, the Developer shall conduct a value engineering

workshop. Proposed changes to the design shall be submitted to the Department for review and approval.

5. Construction Responsibilities

5.1. The Developer will supervise and inspect all work performed during construction and provide engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications.

5.1.1. Unless the parties enter a separate agreement to the contrary, all correspondence and instruction to the contractor performing the work will be the sole responsibility of the Developer.

5.1.2. All work will be performed, unless otherwise specifically stated in the contract documents for the Project, in accordance with the latest edition of the Department's Guide Schedule for Sampling and Testing, the Quality Assurance Program Manual, the Construction Contract Administration Manual, and the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges or special specifications or provisions approved by the Department.

5.2. The Department will grant the Developer or its authorized representative access to State right of way to perform any activities required to execute the work and issue a right of entry for the performance of all construction activity.

5.3. Subject to Paragraph 10 of the agreement, the Developer will negotiate and approve all change orders and other contract revisions that the Developer finds necessary or convenient to accomplish the construction activities for the Project. For change orders and other contract revisions that affect prior environmental approvals or result in non-conformity with the specifications and standards agreed upon for the Project, the Developer must assess any potential environmental effects and any additional or revised environmental permits, issues, coordination, mitigation, and commitments required as a result of the contract revisions.

5.3.1. The Developer will document any such changes, including a proposed course of action.

5.3.2. The Developer will notify the Department of the need for such changes and submit the appropriate documentation.

5.3.3. The Department shall have no more than 10 business days after the Developer's submission either to approve the changes as submitted by the Developer or to respond with the Department's proposed revisions.

5.3.4. If the Department responds with revisions, the Developer and the Department will work diligently and in good faith to develop mutually agreeable changes that shall then be implemented by the Developer.

5.3.5. The Developer shall be responsible for obtaining any required approvals from federal, state, or local governmental authorities, with the exception of the Department and FHWA, and except as otherwise specified in this agreement.

5.3.6. To the extent that a change order requires the adoption of alternative design criteria, an exception to the Department's design criteria, or a

change in the approved design, the design must be approved as set forth in Sections 4.3, 4.4, or 4.5, as applicable.

5.4. The Developer will comply with applicable Federal requirements throughout the procurement and construction process in order to maintain the Department's eligibility for Federal reimbursement for Project costs. The Developer's compliance with requirements necessary to maintain eligibility for federal reimbursement is a condition precedent to performance by the Department.

5.5. Within six (6) months after issuance of the "Letter of Acceptance" for a highway improvement, the Developer will provide to the Department all documents and submittals identified in the Department's Construction Contract Administration Manual. This documentation includes:

1) Record Drawings and Final Construction Records,
2) Engineer Certification of Project Completion, and
3) Right of Way Parcel Information (Exhibits, Descriptions, Right of Way Maps, Field Notes, etc.)

6. General

6.1. The Developer and the Department will agree on a transition plan at the time of or before completion of a highway improvement.

6.2. The Developer will schedule regular meetings with the Department to maintain the communication necessary to successfully implement the Project.

6.3. The Developer will prepare program organizational and management documents, including Program Management Plan and Quality Control/Quality Assurance Plan for all work products. The Developer will provide these documents to the Department for all contracted firms participating in the Project.

6.4. The Developer will maintain all documentation relative to implementation and completion of the Project, including without limitation documentation relating to environmental issues, acquisition of right of way, preliminary and final design, and bidding, award, and construction of the Project.

Exhibit 1: Roles and Responsibilities for Each Entity

	Responsible Party
Preliminary Engineering	
Retain Consultant	Developer
Develop Preliminary Design	Developer
Develop Preliminary Cost Estimate	Developer
Define Right of Way Requirements	Developer
TxDOT Review and Approval of Preliminary Engineering Report	Developer, Department
Environmental Review	
Retain Consultant	Developer
Draft Environmental Documents	Developer
Schedule & Conduct Public Meetings	Developer, Department
Review of Environmental Documentation	Developer, Department, FHWA
Notification and Documentation of Comments	Developer
Publish and Hold Public Hearings	Developer, Department
Analyze and Document Public Hearings	Developer
Final Review	Developer, Department, FHWA
Document Approval	Department, FHWA
Environmental Permits, Issues, and Commitments	Developer
Permitting	
Develop Required Permit Applications	Developer
Submit Required Permit Applications	Developer, Department
Right of Way Acquisition	
Develop Right of Way Budget	Developer
Retain Surveyor	Developer
Develop Right of Way Map	Developer
Retain Appraisers	Developer
Work with Owners on Donations, Access, Etc.	Developer
Purchase Parcels After NEPA Process	Developer
Eminent Domain Proceedings	Developer
Utility Identification and Relocation	Developer
Oversight and Audit of Right of Way Process	Department

	Responsible Party
Design	
Retain Designer, Geotech, Surveyor, and other professional service providers	Developer
Develop 30% Submittal Package	Developer
30% Submittal for Department Review	Developer
Final Submittal for Department Review	Developer
Approval of Design	Department, FHWA
Bid for Construction	
Preparation of Bid Documents	Developer
Advertisement for Bids	Developer
Bid Opening, Evaluation, and Award	Developer
Construction	
Coordination with Utilities for Relocation	Developer
Issuance of Construction Notice To Proceed	Developer
Administration of Construction Contract	Developer
Inspection of Construction	Developer
Issuance of Notification of Substantial Completion	Developer
Issuance of Letter of Approval for Payment	Department
Issuance of Notification of Completion	Developer
Issuance of Letter of Acceptance	Department

Exhibit 2: General Review Schedule
Specific timelines are incorporated into the timeline for each highway improvement.

	Type of Review		Review Time
1	Preliminary/Schematic Layout Review		2 weeks
2	Environmental Review	Joint Environmental Review	To be determined
		Review (Department)	
		Review (Categorical Exclusion) (2 weeks district; 2 weeks ENV)	4 weeks
		Review (Environmental Assessment) (3 weeks district; 3 weeks ENV)	6 weeks
		Review (Environmental Impact Statement) (4 weeks district; 4 weeks ENV)	8 weeks
		Resource Agency Review	To be determined
		FHWA Review (draft document)	To be determined (minimum 4 weeks)
		Release by the Department to Public Hearing • Advertising for public hearing • Conducting Public Hearing • Receipt of written comments	6 weeks plus 10 days for receipt of written comments
		Developer Addresses Comments from Public Hearing (note, 3 weeks is minimum for non-controversial projects, and is not realistic for a developer-type project)	6 weeks
		Department Review of Comments (2 weeks district; 2 weeks ENV)	4 weeks
		FHWA Review of Comments and issues determination document	To be determined (minimum 4 weeks)
3	Review of Plans, Specifications, and Estimates	30% Completion	2 weeks
		100% Completion	2 weeks
		Federal Approval of Letter of Authority	1 week

ATTACHMENT E

Resolution or Ordinance

CAMINO REAL REGIONAL MOBILITY AUTHORITY
BOARD RESOLUTION

WHEREAS, on July 17, 2009, the Camino Real Regional Mobility Authority (CRRMA) submitted a Pass-Through Financing Proposal to the Texas Department of Transportation (TxDOT), which requested pass-through financing for the I-10 at Loop 375 (Americas Interchange) and I-10 Corridor Aesthetic Projects (Proposal);

WHEREAS, the Texas Transportation Commission (TTC) gave preliminary approval for the Proposal at the September 24, 2009 TTC meeting, with the second and final approval being given at the November 19, 2009 TTC meeting;

WHEREAS, the CRRMA Board previously gave authorization to the Executive Director for execution of a pass-through toll agreement with TxDOT for the Americas Interchange and Aesthetic Projects via Board Resolution of December 16, 2009, which was subject to the review and approval of the CRRMA's outside legal counsel; and

WHEREAS, the CRRMA and its outside legal counsel have negotiated the final pass-through toll agreement with TxDOT, which includes revisions to the originally understood arrangement between the parties, including the addition of the City of El Paso as a party to the agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CAMINO REAL REGIONAL MOBILITY AUTHORITY:

THAT the Executive Director be authorized to execute a pass-through toll agreement with the Texas Department of Transportation and the City of El Paso in substantially the same form as attached, including any related documents and instruments as required, for the I-10 at Loop 375 (Americas Interchange) and I-10 Corridor Aesthetic Projects in the total cumulative amount of $10 million.

PASSED AND APPROVED THIS 30TH DAY OF JUNE 2010.

CAMINO REAL REGIONAL
MOBILITY AUTHORITY

Harold W. Hahn, Chair

ATTEST:

Scott McLaughlin, Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

Attachment E 1
City of El Paso Resolution

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign the "Pass-Through Agreement for Payment of Pass-Through Tolls by the Department" between the City, the Texas Department of Transportation and the Camino Real Regional Mobility Authority for the design and construction of up to four direct connectors at the 1-10/Loop 375 interchange and approximately 28 miles of aesthetic improvements along the I-10 corridor.

ADOPTED this 6th day of July, 2010.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

William F. Studer, Jr., Deputy City Manager for Administration and Financial Services

57219h Pass through agreement MSHO 6/10

ATTACHMENT F
PROGRAMMATIC PROCEDURE FOR RIGHT OF WAY OVERSIGHT OF PASS-THROUGH PROJECTS
FOR I-10 @ LOOP 375 (AMERICAS) INTERCHANGE PROJECT

Right-of-Way for the I-10 @ Loop 375 (Americas) Interchange project will be acquired by the State per the Project Development Agreement.

ATTACHMENT F

PROGRAMMATIC PROCEDURE FOR RIGHT OF WAY OVERSIGHT OF PASS-THROUGH PROJECTS
FOR I-10 AESTHETIC PROJECT

PER THE AGREEMENT (PARAGRAPH 7), TO BE DEVELOPED IF RIGHT-OF-WAY ACQUISITION BECOMES NECESSARY

ATTACHMENT F
EXHIBIT "A"

CERTIFICATION OF COMPLIANCE
FOR I-10 AESTHETIC PROJECT

The Camino Real Regional Mobility Authority (CRRMA), the Developer under a Pass-Through Toll Agreement with the Texas Department of Transportation (TxDOT) for the purpose of constructing and operating improvements to the I-10 Aesthetics project, pursuant to Texas Transportation Commission Minute Order 112045 (the Project), hereby certifies that:

(1) real property will be acquired for the Project right of way in compliance with all applicable State and Federal laws and requirements, including the policies and practices of the Right of Way Manual Collection of TxDOT's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq.;

(2) it has received and has continuing access to the Online Right of Way Manual Collection; and

(3) prior to the implementation of any procedures that are at variance with established TxDOT policies and practices for the acquisition of real property, CRRMA will submit such procedures in writing to TxDOT's District Engineer for the El Paso District and the Executive Director's approval must be obtained.

For purposes of this Project, it is understood that references in the Right of Way Manual Collection to TxDOT personnel, District personnel, District, District Engineer, ROW Division, Director of the ROW Division, and other similar TxDOT employees or titles involved in the acquisition process shall be deemed to mean CRRMA and its authorized agents. It is the intent of this provision to allow CRRMA to acquire real property for the Project on behalf of the State without prior review and approval of TxDOT, subject to compliance with all applicable State and Federal laws and requirements as described above, the variance procedure, and TxDOT's audit and enforcement obligations.

Date: _____, 200__

Camino Real Regional Mobility Authority

By: _____

Executive Director

ACCEPTED:

TEXAS DEPARTMENT
OF TRANSPORTATION

By: _____
John Barton., P.E.
Assistant Executive Director

FEDERAL HIGHWAY ADMINISTRATION

By: _____
Printed Name: _____
Title: _____

TITLE III PARCEL REVIEW CHECKLIST FOR LPAs

County:
District:
ROW CSJ No.:
Parcel No.:
Acquiring Agency:

General

Was the informational notice given to owner? Yes ☐ No ☐

Date of the notice:

Was the "Landowner's Bill of Rights Statement" properly provided prior to initiation of negotiations? Yes ☐ No ☐

Date provided:

Appraisal

Was the real property appraised before the initiation of negotiations? Yes ☐ No ☐

Approval date of the appraisal:

Was the owner or his designated representative given the opportunity to accompany the appraiser during inspection of the property? Yes ☐ No ☐

Did the appraisal disregard any decrease or increase in value caused by the proposed facility? Yes ☐ No ☐

Did the written appraisal of the parcel conform to the established standards for appraisal? Yes ☐ No ☐

Does the acquiring agency require compliance with the Uniform Standards of Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) for appraisals? Yes ☐ No ☐

Were the appraiser and review appraiser qualified by the acquiring agency? Yes ☐ No ☐

Were there any apparent conflicts of interest on the project on behalf of the appraiser or review appraiser? Yes ☐ No ☐

Was a written appraisal review report prepared, and an executed certification provided by a qualified review appraiser? Yes ☐ No ☐

Were all items of real estate included in the appraisal? Yes ☐ No ☐

Were retention values for any improvements retained by the owner properly documented? Yes ☐ No ☐

Negotiation

Did the review appraiser negotiate for acquisition? Yes ☐ No ☐

Did the appraiser negotiate for any parcel for which the appraised just compensation was more than $2,500? Yes ☐ No ☐

Were acquisition policies and procedures explained to the owner? Yes ☐ No ☐

Was prompt written offer made to acquire real property for the full amount of the approved appraisal of just compensation? Yes ☐ No ☐

Date of the first written offer:

The written offer included the following:

☐ statement of the full amount established as just compensation

☐ separate statement as to damages (if applicable)

☐ description and location identification of the ROW parcel, and of the interest in the real property to be acquired

☐ identification of the buildings, structures and other improvements considered to be real property for which the offer is made

☐ identification of separately owned interests (if applicable)

☐ a copy of the appraisal report delivered to the owner at the time the offer was made

Was the offer and its basis discussed with the owner? Yes ☐ No ☐

Was the owner given reasonable opportunity to consider the offer and to present material believed to be relevant to valuation of the property? Yes ☐ No ☐

Was any evidence discovered which suggests that coercive action was taken to compel agreement on price paid for the property? Yes ☐ No ☐

Was the owner required to surrender possession before payment was made or proper award deposited in court? Yes ☐ No ☐

If the property was donated, was the owner advised of his right to receive just compensation? Yes ☐ No ☐

Was every reasonable effort made to acquire the property expeditiously by negotiation? Yes ☐ No ☐

Was property acquired under Title VI requirements, without regard to race, color, age, religion, sex, national origin, or handicap? Yes ☐ No ☐

Relocation Assistance

The acquisition of this property resulted in the displacement of: (check all that apply)

None ☐ Residence ☐ Business ☐ Farm Operation ☐ Non-Profit Organization ☐ Personal Property Only ☐

If residential, was a replacement housing supplement computed utilizing comparable decent, safe, and sanitary replacement housing? Yes ☐ No ☐

Amount of the supplement: Date approved:

Amount of actual replacement housing payment: Date of payment:

If a non-residential displacement, list all payments made.

☐ Moving Payment - Business, Farm, or Non-Profit

Amount(s): Date(s):

☐ Moving Payment - Personal Property

Amount(s): Date(s):

☐ Reestablishment Payment

Amount(s): Date(s):

Were applicable Relocation Assistance Advisory Services offered to the displaced resident, business, or farm operation, or non-profit organization? Yes ☐ No ☐

Was a 90-Day Notice given to the displaced person? Yes ☐ No ☐

Date of notice:

Was a 30-Day Notice to Vacate given to the displaced person? Yes ☐ No ☐

Date of notice:

Were all relocation benefits calculated and paid in accordance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments thereto."? Yes ☐ No ☐

Based on review, is the acquiring agency complying with all *Title III* guidelines? Yes ☐ No ☐

Parcel Legal Description / Plat

Do the survey and mapping technical requirements comply with the technical requirements as set forth in applicable Department manuals? Yes ☐ No ☐

Does a broad review of the parcel legal description / plat and comparison to the right of way map indicate the presence of all component parts? Yes ☐ No ☐

_____ _____

Signature of TxDOT Review Agent Date

ATTACHMENT G

Project Development Agreement

PROJECT DEVELOPMENT AGREEMENT
IH 10/LOOP 375 INTERCHANGE

TEXAS DEPARTMENT OF TRANSPORTATION
AND
CAMINO REAL REGIONAL MOBILITY AUTHORITY

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38. Relationship of the Parties
39. Compliance with Applicable Laws
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Exhibit A – Location Map for the Project
Exhibit B – Project Description and Scope of Work
Exhibit C – Schedule of Payments
Exhibit D – Certification for Federal-Aid Contracts Regarding Lobbying Activities
Exhibit E – Debarment Certification
Exhibit F – Lower Tier Participant Debarment Certification

IH 10/LOOP 375 INTERCHANGE PROJECT
PROJECT DEVELOPMENT AGREEMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

THIS AGREEMENT, by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission, hereinafter identified as "TxDOT," and the **CAMINO REAL REGIONAL MOBILITY AUTHORITY**, a political subdivision of the State of Texas, hereinafter identified as the "Authority," is executed to be effective this 19 day of November, 2009 ("Agreement").

WITNESSETH

WHEREAS, on February 28, 2006, the City of El Paso ("City") petitioned the Texas Transportation Commission ("Commission") for authorization to form the Authority pursuant to provisions of the Texas Transportation Code; and

WHEREAS, in Minute Order No. 110573 adopted by the Commission on June 29, 2006, the Commission authorized the creation of the Authority; and

WHEREAS, the Authority now operates pursuant to Chapter 370 of the Texas Transportation Code (the "RMA Act") and 43 TEX. ADMIN. CODE §26.01 *et seq.* (the "RMA Rules"), as well as its own policies and procedures; and

WHEREAS, in Minute Order No.111734 adopted by the Commission on March 5, 2009, the Commission approved funding in the amount of $75 million under the provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA") for, among other projects, improvements to an interchange at IH 10 and Loop 375 and authorized the Executive Director of TxDOT or the Executive Director's designee to proceed with development and contract award for all the projects and to enter into any necessary agreements associated with the projects; and

WHEREAS, Section 370.033(f) of the Texas Transportation Code authorizes a regional mobility authority to develop a project within its boundaries on behalf of TxDOT; and

WHEREAS, on April 16, 2009 the Authority requested approval to improve the state highway system by developing the interchange at IH 10 and Loop 375 in El Paso County, a project on the state highway system and within the boundaries of the Authority; and

WHEREAS, in Minute Order NO. 111818 adopted by the Commission on May 28, 2009, the Commission authorized the Authority to develop, design, and construct improvements to an interchange at IH 10 and Loop 375 in El Paso County, the location of which is shown on Exhibit A to this Agreement; and

WHEREAS, a project development agreement is necessary and desirable to clarify the relationships between TxDOT and the Authority in connection with the development, design, and construction of the interchange at IH 10 and Loop 375 in El Paso County ("IH 10/Loop 375 Interchange Project" or "Project");

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and promises of the parties as described in this Agreement, TxDOT and the Authority agree as follows:

DEFINITIONS

Design/Build Comprehensive Development Agreement (Design/Build CDA) shall mean the agreement between the Authority and a private entity (Design/Build CDA Contractor) providing for the design and construction of all or a portion of the IH 10/Loop 375 Interchange Project.

Development Work or Work shall mean all of the work required to be furnished and provided by Design/Build CDA Contractor under the contract documents between the Authority and the Design/Build CDA Contractor ("Contract Documents"), including all administrative, design, engineering, support services, utility adjustment work to be furnished or provided by the Design/Build CDA Contractor, reimbursement of utility owners for utility adjustment work furnished or provided by such utility owners or their contractors and consultants, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Design/Build CDA Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project except for those persons other than members of the Design/Build CDA Contractor.

Final Acceptance shall mean the occurrence of all the events and satisfaction of all of the conditions set forth in Paragraph 12. of this Agreement.

Project shall mean the IH 10/Loop 375 Interchange Project as defined by the scope of work in Paragraph 5. of this Agreement.

Punch List shall mean the list of Development Work which remains to be completed after Substantial Completion has been achieved and before Final Acceptance, and shall be limited to items of the Development Work, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

Substantially Complete and **Substantial Completion** shall mean that a segment of roadway may be used for its intended purpose; no defects or incomplete work remains which would materially interfere with the use of the roadway; the segment may be operated without damage to the Project or any property within or adjacent to the Project right of way; all necessary traffic control devices are installed and operational; the traffic lanes are striped; and all safety appurtenances necessary for safe operation are installed.

1. **Responsibility for Development, Design, and Construction.** The Authority acknowledges and fully accepts its responsibility for the development, design, and construction of the Project and further acknowledges and fully accepts responsibility for the maintenance, regulation, signage, illumination and overall operation of the Project prior to such time after Notification of Completion as the Project is accepted by TxDOT.

2. **Sources and Uses of Funds.** The parties acknowledge and agree that the following represents the anticipated sources of funding for the Project:

a. Total funding for the Project is $146,000,000. Of that amount $21,000,000 will be provided by the El Paso Metropolitan Planning Organization, $75,000,000 will be provided by TxDOT, and $50,000,000 will be provided by the Authority, subject to Paragraph 2.d. below.

b. El Paso Metropolitan Planning Organization funding of $21,000,000 is provided by the ARRA.

c. TxDOT funding of $75,000,000 is provided by the ARRA. TxDOT may provide additional funding through the state infrastructure bank, the pass-through toll financing program, and the coordinated border infrastructure funds, as described in Paragraph 2.d. below.

d. The Authority is responsible for funding of $50,000,000 of the total project funding and, except as otherwise specifically provided in Paragraph 8.a. and Paragraph 11.c. below, all costs above the estimated $146,000,000 total project cost, provided that such costs are not attributable to requests or actions of TxDOT that cause the Project cost to increase. Any of the funding sources described below in subparagraphs (1)-(3) shall be considered funding provided by the Authority for purposes of this Paragraph 2.

(1). In the event the parties determine that all or a portion of the Authority's funding obligation should be structured through TxDOT's pass-through toll financing program, the Authority will submit an application for consideration under the program and the funding provided by TxDOT will increase by the amount paid under the pass-through toll agreement as approved by the Texas Transportation Commission. The Authority may use the pass-through toll agreement to secure the Authority's issuance of bonds to finance a portion of the Project.

(2). The Authority may submit an application for consideration under TxDOT's state infrastructure bank financial assistance program for obtaining funds to finance a portion of the Project.

(3). The Authority may also use Coordinated Border Infrastructure Funds, subject to approvals by TxDOT, El Paso MPO, and Federal Highway Administration ("FHWA").

e. Total funding will be used to cover all phases of development, design, and construction of the Project, including engineering, legal, financial, advisory, and other administrative expenses of the Authority associated with development of the Project, except as otherwise provided in Paragraph 2.f. below.

f. Funding for administrative expenses of the Authority, including engineering, legal, financial, and advisory, that are associated with developing the Design/Build CDA procurement documents and selection process for the Project, and incurred after March 4, 2009, but prior to the date federal funds are obligated, will be reimbursed by TxDOT (in amounts not to exceed $971,900) from sources other than those identified in Paragraph 2.a. Funding for eligible administrative expenses of the Authority, including engineering, legal, financial, and advisory, that are associated with developing the Design/Build CDA procurement documents and selection process for the Project, and incurred after the date federal funds are obligated, will be part of the total project cost. All such reimbursement payments will be made on a timely basis in order for the Authority to meet its obligations under the Design/Build CDA.

g. Both TxDOT and the Authority understand that Federal-Aid funding will be used for the Project and that all applicable federal requirements shall apply.

h. TxDOT, at its expense, may audit the Project at any time. Upon completion of the Project, TxDOT, or an independent auditor approved by TxDOT, at TxDOT's option and expense, may perform an audit of the Project's costs. Any funds due to the Authority, TxDOT, or others shall be paid by the owing party within thirty (30) days after written notification that funds are due, as determined by the audit unless the owing party disputes that amounts are owed, in which case payment of any undisputed amounts shall be made within thirty (30) days and payment of disputed amounts, if any, shall be made within thirty (30) days of the dispute being resolved.

i. The state auditor, at its expense, may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

3. Payment. Payments to the Authority will be based on a payment schedule that shall be developed by the Authority, and approved by TxDOT. The Authority shall propose the payment schedule as an amendment to this Agreement in the form set forth in Exhibit C. TxDOT shall complete its review of the amendment and the Executive Director of TxDOT or designee shall sign the amendment or notify the Authority of non-concurrence within ten (10) business days of receipt thereof. In the event TxDOT does not concur, it shall notify the Authority of the reasons therefore within such ten (10) day

period. The Authority will have an opportunity to provide additional information and/or revise the schedule and resubmit to TxDOT. TxDOT shall review and respond to any such re-submittal within five (5) business days. TxDOT acknowledges that the payment schedule and its commitment to make timely payments will be a material part of the Authority's procurement of a Design/Build CDA Contractor for the Project, and that the Authority will rely on the payment schedule in connection with representations made in procurement documents and commitments made in Contract Documents.

4. Contracting Procedures.

a. The Authority anticipates developing the Project through a Design/Build CDA. The process for doing so is authorized under §370.305 through §370.312 of the RMA Act. TxDOT and FHWA representatives have had, and will continue to have, the opportunity to observe the Design/Build CDA procurement process for purposes of confirming compliance with applicable laws and regulations and to participate in the review of competitive submittals. TxDOT shall in no way be liable for any claims, protests, or causes of action arising out of the Design/Build CDA procurement process or arising out of any act or omission of the Design/Build CDA Contractor. The Authority shall ensure compliance by the Design/Build CDA Contractor with the applicable provisions of this Agreement.

b. Prior to formally releasing to proposers the Request For Detailed Proposal ("RFDP") documents associated with the Design/Build CDA procurement process, the RFDP shall be submitted to TxDOT for approval. TxDOT shall have thirty (30) days in which to review the RFDP and: (i) approve it for formal release; or (ii) identify, in writing and with specificity, items to be addressed in the RFDP. TxDOT shall have ten (10) business days in which to review and approve the RFDP for formal release upon re-submittal by the Authority after addressing TxDOT's comments under (ii) above.

c. The execution of the Design/Build CDA shall also be subject to approval by TxDOT. TxDOT shall issue such approval within five (5) business days of the later of: (i) a request by the Authority to approve the Design/Build CDA for execution; or (ii) the Authority receiving the last of any approvals required under state law, including, if applicable, approval for execution by the Office of the Attorney General.

5. Scope of Work.

a. The scope of work will include development and construction of four direct connectors to the IH 10 and Loop 375 interchange as described in Exhibit B, and it is currently anticipated that the full amount of Project funding described in Paragraph 2.a. will be available for the Project. In the event firm commitments for funding necessary to develop the full scope of work as described in Exhibit B have not been secured by April 22, 2010, (in such form that the Authority reasonably determines will enable it to issue a Notice to Proceed for Construction), or if the bids received from Design/Build CDA Contractors exceed the Authority's budget for the Project, the scope will be reduced by

agreement of the parties to allow for development of such portion of the Project that can be constructed with the then-available funding. The Authority will assure that the Design/Build CDA provides for this type of modification and TxDOT agrees to cooperate in revising the scope in a timely manner if the modification becomes necessary.

b. Both TxDOT and the Authority acknowledge that the scope of work under the Design/Build CDA may be less than the full scope of work as defined by the approved environmental documents. Subject to the availability of funding as identified in Paragraph 2., the Authority agrees to complete any remaining facilities within the scope of work as defined by the Environmental Documents (as defined below) when necessary to address safety concerns or unacceptable levels of congestion in the area of the unfinished facilities.

c. If the Authority submits work that does not comply with the terms of this Agreement, TxDOT shall instruct the Authority to make any revisions that are necessary to bring the work into compliance with the Agreement. No additional compensation shall be paid for this work unless the work is the result of a change in scope or process directed by TxDOT.

6. Control of Work.

a. The Authority shall be responsible for the design and construction of the Project, including:

(1). Ensuring that all environmental permits, issues, and commitments are adhered to in the Project design;

(2). Addressing change orders for potential environmental impacts and obtaining any necessary environmental permits, issues, and commitments for such change orders;

(3). Ensuring that all construction plans are signed, sealed and dated by a professional engineer licensed in the State of Texas; and

(4). Carrying out only those utility relocations and adjustments necessary to resolve conflicts with Project scope of work identified in Exhibit B, provided that in doing so the Authority shall function as an agent of TxDOT and the rules and regulations regarding utility relocations, payments to utilities, and other issues governing utility relocations shall be those applicable to TxDOT; and further provided that TxDOT, as the ultimate owner of the Project, shall take such actions as are required to assure that its rules and regulations apply to utility relocation activities.

b. Except as otherwise provided in this Agreement, the Authority shall have sole authority and responsibility for:

(1). The design of the Project and all features thereof;

(2). The selection of underwriters, investment bankers, financial advisors, legal counsel, consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, sureties, and other parties retained in connection with the financing, design, or construction of the Project;

(3). Subject to TxDOT and FHWA written approval to proceed with construction under Paragraph 11.b., the commencement, sequencing, and timing of design and construction activities and other work;

(4). The acceptance or rejection of work or other deliverables performed under a Design/Build CDA; and

(5). The procurement of a Design/Build CDA Contractor and negotiation of a Design/Build CDA, as well as other contracts necessary for the Authority to meet its obligations to develop the Project.

c. The Authority shall be responsible for meeting any timeline requirements in the ARRA. TxDOT shall cooperate and use its best efforts to assist the Authority in taking actions necessary to meet the timeline requirements identified by the ARRA.

d. The Authority shall be responsible for adhering to FHWA and TxDOT requirements for federally funded design/build projects.

7. Environmental Report, Mitigation, Remediation, and Compliance.

a. Development of the Project shall comply with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, 43 TAC §2.50, and Natural Resources Code, Chapter 191.

b. An environmental assessment under the National Environmental Policy Act ("NEPA") was conducted by TxDOT and approved by the FHWA for the ultimate project configuration with one-lane direct connectors. A Finding of No Significant Impact ("FONSI") was issued to TxDOT on January 24, 2003. A re-evaluation of the environmental assessment was conducted by TxDOT and a letter of approval for the re-evaluation was issued by FHWA on November 15, 2007. At FHWA's request, TxDOT revised the Interchange Access Justification ("IAJ") report. Due to the expiration of the United States Army Corp of Engineers ("USACOE") Section 404 permit, TxDOT pursued and received approval of a Jurisdictional Determination that led to a decision from the USACOE on October 13, 2009, that a new Section 404 permit was not required for this project. The environmental assessment, the FONSI, the letter of approval for the re-evaluation, the approval of the revised IAJ, and the Jurisdictional Determination

collectively constitute the "Environmental Documents". TxDOT will provide the Environmental Documents to the Authority as soon as they are available.

c. Subject to subsections g. and h. below, in the event future revisions are made to the previously granted environmental approval, the Authority shall be responsible for preparing for and conducting all public meetings and hearings required for development of the environmental decision and for summary and analysis of all public meetings and hearings. When applicable, the Authority is also responsible for certifying that a public hearing has been held in accordance with the applicable rules, the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987.

d. Subject to subsections g. and h. below, the Authority is responsible for all environmental mitigation, remediation, and compliance identified in the Environmental Documents.

e. The Authority is responsible for obtaining all permits and approvals identified in the Environmental Documents except as otherwise required by law or by agreement between TxDOT and a state or federal agency.

f. Prior to beginning construction, the Authority shall provide TxDOT with written certification that any additional environmental permits and commitments are complete.

g. In the event that the Authority changes the scope of the environmentally-cleared Project on its own accord and such changes require a re-evaluation of (or supplement to) the environmental documents, the cost and risk of such work shall be borne by the Authority, including without limitation the cost of public meetings and hearings. In the event that a change to the scope of the environmentally-cleared Project is requested by TxDOT or a federal environmental authority and such change requires a re-evaluation of (or supplement to) the environmental documents, the cost and risk of such work shall be borne by TxDOT, including without limitation the cost of public meetings and hearings.

h. In the event the Environmental Documents mentioned in Paragraph 7.b.are determined to be invalid, or if FHWA revokes the approval of any of the Environmental Documents, TxDOT shall be responsible for the cost of all work required to correct errors or omissions which occurred in connection with work performed by, or under the direct supervision of, TxDOT and which was associated with or a part of the environmental review and approval process.

8. Acquisition and Use of Right of Way.

a. The Project shall be constructed within the IH 10 and Loop 375 highway corridors on existing right of way and additional right of way yet to be acquired. TxDOT shall diligently proceed with acquisition of all additional right of way and any easements as are necessary for the Project so as to timely acquire all ROW necessary to enable the

Design/Build CDA Contractor to develop the Project within the time period required under the Design/Build CDA. All costs associated with acquisition of additional right of way will be part of the total project cost - up to a maximum of $8,210,000. Costs in excess of such amount shall be required to be funded by TxDOT from sources other than the Project funding sources identified in Paragraph 2. TxDOT shall deliver to the Authority monthly expense reports describing reimbursement or payment of its right of way acquisition costs under this Paragraph 8.a. Notwithstanding the foregoing, TxDOT may request, and the Authority may agree, to acquire certain parcels of ROW necessary for the Project, provided, however, that in such event TxDOT will make payments directly to owners of property interests to be acquired or to the registry of a court, as applicable. In the event the Authority does agree to acquire any ROW, all property interests shall be placed in the State's name; the Authority must comply with all applicable state and federal laws, regulations, policies, and procedures, including the requirements of the Right of Way Manual Collection of TxDOT's Online Manual System and Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq ("Uniform Act"); documentation to support compliance must be maintained by the Authority; and the Authority must obtain advance approval from TxDOT for any variance in established procedures. TxDOT may monitor and audit the Authority's acquisition of right of way on the Project at any time. All costs associated with TxDOT's monitor and audit activities under this paragraph will be part of the total project cost. On request, the Authority shall furnish TxDOT with satisfactory proof of compliance with applicable state and federal laws, regulations, policies, and procedures. If TxDOT reasonably determines that right of way maps, field notes, parcel plats, appraisals, access designations, acquisition documentation, relocation assistance benefits, or any other acquisition requirement is not in compliance with this Agreement, the Authority shall take all necessary steps to achieve compliance. The cost for additional work to achieve compliance shall be borne by the Authority unless due to changes in project scope or delivery directed by TxDOT.

b. For right-of-way for which the Authority agrees to acquire, the Authority will be responsible for any required relocation assistance along the route of the right of way as may be determined to be eligible under the relocation assistance program. The relocation assistance plan must provide reasonable time frames for orderly relocation of residents and businesses being displaced by the Project and must be in accordance with state and federal requirements, including the federal Uniform Act. All costs associated with the relocation assistance, including payments to displacees, will be assumed by the Authority.

c. The Authority shall have, and TxDOT hereby grants to the Authority, a license and rights of entry and possession on, over, and under such area and right of way owned by, subsequently acquired, and otherwise under TxDOT's control and as necessary to enable the Authority to cause the Project to be constructed and operated. Such license and rights of entry and possession shall cease upon Final Acceptance of the Project by TxDOT, unless otherwise agreed to by the parties.

9. Utilities.

a. Subject to Paragraph 6.a.(4)., the work related to relocation, adjustment, or removal of existing utilities necessary to resolve conflicts and allow for construction of the Project as described in Exhibit B shall be the responsibility of the Authority, including without limitation the identification of existing utilities and coordination with utility owners to secure relocation, adjustment, or removal of those facilities. All costs associated with the relocation, adjustment, or removal of existing utilities will be part of the total project cost. Any costs associated with work to resolve utility conflicts for additional phases of the interchange project (or related facilities) shall be required to be funded by TxDOT from sources other than the Project funding sources identified in Paragraph 2.

b. The work shall be in accordance with applicable state and federal laws, regulations, rules, policies, and procedures, including 43 TAC §21.31 et seq. (Utility Accommodation) and 23 CFR Chapter 1, Part 645. TxDOT acknowledges that utility relocation, adjustment, or removal activities may be undertaken on the Authority's behalf by its Design/Build CDA Contractor, in which case the Authority shall be responsible for assuring that the Design/Build CDA Contractor carries out all such relocation, adjustment, and removal activities in a manner consistent with applicable laws and administrative regulations. TxDOT agrees that it shall cooperate with and assist the Authority as necessary to assure that Utility Adjustments occur in a manner that allows for timely development of the Project, and because the Project will ultimately be owned and operated by TxDOT as part of the state highway system the laws, rules and regulations regarding utility relocations shall be those applicable to TxDOT projects.

10. Project Design.

a. TxDOT previously had schematic design, environmental document and right of way maps for the interchange improvements prepared, signed, sealed, and approved per the Environmental Documents, and will make such documents available to the Authority. The Authority is not obligated to use the schematic design. If, however, the Authority does decide to use the schematic design, the Authority must accept and approve the schematic design as its own and assure that it is in accordance with Paragraph 10.c. below.

b. Should the Authority develop a new schematic, the schematic shall be developed in accordance with Paragraph 10.c. below and submitted to TxDOT for review and approval.

c. Plans and specifications developed by the Authority for the Project must be in compliance with either the latest version of TxDOT's design manuals, as defined in 43 TEX. ADMIN. CODE § 27.51, or, in the absence of applicable TxDOT standards in the design manuals, in compliance with a similar completed design by the El Paso District. In the absence of either of the previous resources, plans and specifications must be in

compliance with the latest version of the American Association of State Highway and Transportation Officials ("AASHTO") standards, as described in 43 TEX. ADMIN. CODE § 27.56(b)(1). For purposes of this section, the latest version of the design manuals and AASHTO standards are those in effect on the date of issuance of the RFDP for the Design/Build CDA as updated by all non-discriminatory changes made subsequent to that date. All plans and specifications must be designed in accordance with "desirable" rather than "minimum" design criteria values, and may not be designed using lower design criteria values than those in the TxDOT/FHWA approved schematics.

d. The Authority may request exceptions to the design standards pursuant to 43 TEX. ADMIN. CODE § 27.56(b)(2). Within a reasonable time after receipt of the request, but no later than ten (10) business days, the Executive Director of TxDOT or designee may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental or other relevant factors, and that the proposed design is a reasonable engineering solution. Notwithstanding this deadline for TxDOT approval, all requests for exceptions are subject to further approval by FHWA.

e. Plans and specifications for the Project shall also conform to the latest version of TxDOT's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges. However, the Executive Director of TxDOT or designee may approve use of alternative specifications if the alternative is determined to be sufficient to ensure the quality and durability of the finished product for its intended use and the safety of the traveling public.

f. The El Paso District of TxDOT has designated an engineer (the "TxDOT Engineer"), who will be assisted by other TxDOT personnel, to oversee TxDOT's responsibilities in the Project design. During the preliminary and intermediate design phases, TxDOT personnel may participate in over-the-shoulder reviews and design workshops to provide comments on the Project design work as it progresses. TxDOT comments and any related changes to such design work will be documented in meeting minutes or other documents.

g. When the design work for each design package is 30% complete, the Authority shall submit, or shall cause its Design/Build CDA Contractor to submit, to the TxDOT Engineer, the information identified in 43 TEX. ADMIN. CODE § 27.56(c)(2). The TxDOT Engineer and representatives from TxDOT may review and provide comments on the design package to the Authority. TxDOT shall complete its review and the TxDOT Engineer shall notify the Authority of its approval or disapproval of the information within ten (10) business days of receipt thereof. If no notification is given, the information will be deemed approved. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such ten (10) day period. The Authority will have an opportunity to correct or submit additional information to cure any defects or deviations identified by TxDOT. TxDOT shall review and respond to any such re-submittal within five (5) business days. TxDOT comments and changes to such design work will be documented in meeting minutes or

other documents. The procedure in this paragraph shall be repeated when the design work for each design package is 65% complete.

h. When final plans for each design package are complete, and after the design package has been reviewed by the Authority, the Authority shall submit, or shall cause its Design/Build CDA Contractor to submit, to the TxDOT Engineer the information identified in 43 TEX. ADMIN. CODE §27.56(c)(4). The TxDOT Engineer and other TxDOT representatives will review the design package and will forward the design package and comments to the Executive Director of TxDOT or designee. TxDOT shall complete its review and the Executive Director of TxDOT or designee shall notify the Authority of his approval or disapproval of the information within ten (10) business days of receipt thereof. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such ten (10) day period. The Authority will have an opportunity to correct or submit additional information to cure any defects or deviations identified by TxDOT. TxDOT shall review and respond to any such re-submittal within ten (10) business days.

i. The Design/Build CDA Contractor's Independent Design Quality Assurance Manager shall, pursuant to the Design/Build CDA, certify, prior to any design submittal to the Authority, that the design submittal complies with the Contract Documents, was developed following the approved Design Quality Management Plan, and meets all required standards.

j. All revisions to the Design/Build CDA shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to TxDOT for its records. Any revision that affects prior environmental approvals or significantly revises the project scope or the geometric design must be submitted to the Executive Director of TxDOT or designee for approval prior to beginning the revised construction work. The Authority shall submit, or shall cause its Design/Build CDA Contractor to submit to the TxDOT Engineer all proposed contract revisions that are subject to TxDOT approval. The TxDOT Engineer and other TxDOT representatives will review the proposed revision and will forward the proposed revision and comments to the Executive Director of TxDOT or designee. TxDOT shall complete its review and the Executive Director of TxDOT or designee shall notify the Authority of his approval or disapproval of the contract revision within ten (10) business days. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such ten (10) day period. The Authority will have an opportunity to correct or submit additional information to cure any defects or deviations identified by TxDOT. TxDOT shall review and respond to any such re-submittal within five (5) business days.

11. Construction Responsibilities.

a. The Authority shall be responsible for construction of the Project in accordance with the latest version of TxDOT's Standard Specifications for Construction

and Maintenance of Highways, Streets, and Bridges and administration of the Design/Build CDA, which includes the responsibility for construction engineering, inspection, and material acceptance testing.

b. The Authority shall not begin construction until TxDOT and FHWA provide written approval to proceed. The Project must also be authorized by the FHWA before federally-funded operations are commenced.

c. The Authority has the responsibility of overseeing all construction operations, including the responsibility of ensuring that all environmental permits, issues, coordination, and commitments are adequately addressed, of assessing potential environmental effects of contract revisions, and of obtaining environmental permits issues, coordination, mitigation, and commitments that may be required by contract revisions.

(1). The Design/Build CDA Contractor will, pursuant to the Contract Documents, have responsibility for quality control and will hire a registered engineer to be in charge of construction quality control of internal procedures used by the Design/Build CDA Contractor, its suppliers and subcontractors, to ensure that development work meets project plans and specifications.

(2). The Authority shall retain responsibility for providing material acceptance testing and construction quality acceptance, including certification that construction complies with the Contract Documents and FHWA requirements for quality assurance. The Authority will use TxDOT as its agent to perform these obligations and all associated costs will be charged to total project costs - up to a maximum of $3,500,000. Costs in excess of such amount shall be required to be funded by TxDOT from sources other than the Project funding sources identified in Paragraph 2. If there is a decrease in the Project scope as set forth in Exhibit B, the maximum amount will be adjusted accordingly. TxDOT shall deliver to the Authority monthly expense reports describing reimbursement or payment of its costs under this subparagraph (2). TxDOT shall assure that material acceptance testing, construction inspections, and required certifications occur on a timely basis so as to allow the Project to progress in accordance with the schedule provided in connection with the Design/Build CDA. Performance of quality assurance services will be in accordance with accepted industry standards. If requested or necessary in connection with the Design/Build CDA, TxDOT and the Authority will specify in writing additional details concerning the process for performance of the services.

d. TxDOT may conduct any and all oversight activities it deems reasonably necessary or advisable to comply with FHWA oversight requirements or as otherwise expressly required by FHWA. The TxDOT Engineer or designee assigned to the Project may attend partnering meetings, weekly construction status meetings, and monthly long-term strategy meetings. The TxDOT engineer or designee may visit the Project periodically and as reasonably necessary to comply with oversight requirements. Any such visits or oversight activities conducted by TxDOT shall be in accordance with the

Authority's and the Design/Build CDA Contractor's safety procedures and policies. Oversight expenses incurred by TxDOT will be charged to total project costs, but shall be included in the $3,500,000 noted in Paragraph 11.c.(2). above and subject to the limitation specified therein. Oversight activities shall include, but not be limited to the following:

(1). The Authority shall submit any change orders for the Project to TxDOT for review and approval, and TxDOT's review and approval of change orders shall follow the procedures set forth in Paragraph 10.j., and be part of the change order process set forth in the RFDP.

(2). TxDOT shall review and, within thirty (30) days after receipt thereof, approve or issue written comments on the Hazardous Materials Management Plan and the Construction Quality Management Plan (each as defined in the Design/Build CDA) for the Project. If comments are provided then the Plan(s) shall be revised and re-submitted and TxDOT shall review and approve within ten (10) business days after re-submission.

(3). Should the Authority wish to accept any Nonconforming Work (as defined in the Design/Build CDA) for the Project, TxDOT shall be advised of the Nonconforming Work and shall have final approval of the decision to accept such work.

(4). Should the Authority elect to issue a Directive Letter (as defined in the Design/Build CDA) for the Project, such letter may only be issued after consultation with and approval by TxDOT.

e. TxDOT shall not have the right to require changes in construction as long as construction is in accordance with the latest version of TxDOT's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges in existence as of the date of this Agreement, and in accordance with sound construction and engineering practices. If TxDOT does require special classifications and provisions not in accordance with the latest version of TxDOT's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, TxDOT shall be responsible for any additional costs incurred by the Authority in connection with such changes.

f. FHWA may perform construction oversight and periodic construction inspections and review. The Authority shall make available and provide safe access to FHWA to all work areas. The parties to this agreement shall comply with federal construction requirements cited in 23 CFR, including the requirements in 23 CFR Part 637 Subpart B, 23 CFR Part 635 and CFR Part 633, as applicable. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.

12. Completion and Acceptance. When the Project is completed, the Authority shall issue and forward to TxDOT a Notification of Completion.

a. Prior to issuance of a Notification of Completion TxDOT and the Authority shall mutually agree on a Punch List of work to be performed.

b. Prior to acceptance of the Notification of Completion TxDOT and the Authority shall mutually agree that all work on the Punch List is completed.

c. The Notification of Completion shall certify that:

(1). All Work has been completed in accordance with the requirements of the Contract Documents; the governmental approvals, including FHWA approval of Final Acceptance; and applicable law.

(2). There are no outstanding claims related to the Work.

(3). The Project is open to traffic.

(4). All warranties provided by the Design/Build CDA Contractor transfer in full to TxDOT. To that end, the Authority shall include specific language in the Design/Build CDA to assure that all warranties provided by the Design/Build CDA Contractor transfer in full to TxDOT.

d. Final Acceptance shall be evidenced by issuance by TxDOT of a certificate of Final Acceptance acknowledging the satisfaction of the conditions set forth above.

13. Operation and Maintenance.

a. The Authority will assume responsibility for operation and maintenance of the new and existing roadway facilities (i.e., those facilities existing prior to and those developed pursuant to this Agreement) within the project limits upon the Authority's issuance of a notice to proceed for construction of the Project. TxDOT will assume responsibility for operation and maintenance for the roadway facilities upon Final Acceptance and the Authority shall have no further responsibility for any operations or maintenance activities, unless otherwise agreed to by the parties.

b. Within the scope of work for the Project included in the RFDP, the Authority shall include maintenance after Final Acceptance. Maintenance obligations shall be described in the form of three consecutive five-year options for maintenance services, and the right to exercise such options shall be assignable to TxDOT. TxDOT shall provide a copy of the proposed contract form for inclusion in the RFDP. All costs arising from the negotiation and performance of any such maintenance agreement, as well as the ongoing costs of maintenance beyond Final Acceptance, shall be borne by TxDOT. As part of the RFDP:

(1) maintenance services shall be priced, but not included as part of the Design/Build CDA cost; and

(2) maintenance shall be included in the selection process as a weighted selection factor, with the specific weighting for this factor to be determined by the Authority, subject to TxDOT review and approval as set forth in Paragraph 4.b.

14. Mutual Cooperation.

a. TxDOT and the Authority shall use all reasonable efforts to meet all deadlines specified in this Agreement. TxDOT and the Authority shall use best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

b. TxDOT acknowledges its approval of, and support for, the development, design, and construction of the Project by the Authority pursuant to the RMA Act. Without limiting the provisions of this Agreement, TxDOT and the Commission will take all actions reasonably requested by the Authority which are consistent with this Agreement and in furtherance of the purposes of this Agreement. Unless and until the Authority elects, as evidenced in writing, to abandon its efforts to develop, design, and construct the Project, TxDOT shall not advance any conflicting proposal for the Project. Further, in its consideration of any project that might affect the Project, TxDOT shall use best efforts to minimize or avoid any adverse impact on the Project.

15. Termination. This Agreement may be terminated upon the occurrence of any of the following conditions:

a. by written, mutual agreement and consent of the parties hereto;

b. by either party hereto, upon the failure of the other party to fulfill the obligations as set forth in this Agreement;

c. by satisfactory completion of all responsibilities and obligations described herein;

d. by the Executive Director of TxDOT if a third party legal action is filed against the Authority, the Design/Build CDA Contractor, the Project, TxDOT, or FHWA which results in injunctive relief causing a material delay to the Project that jeopardizes compliance with ARRA funding timeline requirements; or

e. by the Authority, in the event available funding is not sufficient to construct the Project based on bids received from prospective Design/Build CDA Contractors or in the event that cost of requirements for environmental mitigation, remediation or compliance are in excess of funding available to the Authority for the Project and no additional funding can be secured.

16. Remedies. This Agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or

in equity, and all remedies shall be cumulative.

17. Notices. All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or registered U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

Camino Real Regional Mobility Authority
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901
Attention: Executive Director

Texas Department of Transportation
El Paso District Office
13301 Gateway West
El Paso, Texas 79928
Attention: District Engineer

with copies to:

Locke Lord Bissell & Liddell LLP
100 Congress Avenue, Suite 300
Austin, Texas 78701
Attention: C. Brian Cassidy

Texas Department of Transportation
Office of General Counsel
125 E. 11th Street
Austin, Texas 78701

Unless specifically identified as "business days", all references in this Agreement to the term "days" shall be construed as "calendar days."

18. Maintenance of Records. All records and documents prepared by the Authority under this Agreement must be made available to authorized representatives of TxDOT and the FHWA during normal work hours. All records and documents prepared under this Agreement must be maintained by the Authority for three (3) years after final payment of construction costs incurred in connection with the Project, or all pending legal actions related to the Project are completed, whichever occurs later. Notwithstanding the foregoing, the Authority shall comply with all Federal laws pertaining to the retention of records and the provision of access thereto. The Authority shall maintain its books and records in accordance with generally accepted accounting principles in the United States and upon request shall provide TxDOT with a copy of any audit of those books and records.

19. Ownership of Property. After completion or termination of this Agreement, all

documents prepared by TxDOT shall remain the property of TxDOT. All documents produced or approved or otherwise created by the Authority or its Design/Build CDA Contractor shall also be the property of TxDOT and shall be transmitted to TxDOT in searchable, portable document format (PDF) on a monthly basis as required by TxDOT or additional time frame as mutually agreed to by TxDOT and the Authority in writing. Plans shall also be provided in MicroStation 2004 v8 format (.dgn) in accordance with current TxDOT policies and procedures for preparation of the plans including the current Special Provision for Computer Graphics Files for Document and Information Exchange, and TxDOT's MicroStation 2004 v8 and GEOPAK 2004 Criteria files.

20. **Authority Resources.** All employees and consultants of the Authority shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Authority certifies that it currently has adequate qualified personnel in its employment or under contract to perform the work required under this Agreement. On receipt of written notice from TxDOT detailing supporting factors and evidence, the Authority shall remove from the Project any employee or consultant of the Authority who is incompetent or whose conduct becomes detrimental to the work. Unless otherwise specified, the Authority and its consultant shall furnish all equipment, materials, supplies, and other resources required to perform the work.

21. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such provision shall, to the fullest extent permitted by law, be reformed to effectuate the intention of the parties expressed in such provision. To the extent that it cannot be so reformed, that invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

22. **Insurance.** To the extent that this Agreement authorizes the Authority or its Design/Build CDA Contractor to perform any work on TxDOT right of way, before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on TxDOT right of way. This coverage shall be maintained until all work on TxDOT right of way is complete. If coverage is not maintained, all work on TxDOT right of way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

23. **Hold Harmless.** To the extent permitted by law, each party shall save harmless the other party and its officers and employees from all claims and liability due to the materials or activities of the first party, its agents, or employees, performed under this contract that are caused by or result from error, omission, or negligent act of the first party or of any person employed by the first party. To the extent permitted by law, each

party shall also indemnify and save harmless the other party from any and all expense, including but not limited to attorney fees that may be incurred by the other party in litigation or otherwise resisting the claim or liabilities that may be imposed on the other party as a result of such activities by the first party, its agents, or employees that are caused by or result from error, omission or negligent act of the fist party or of any person employed by the first party.

24. **Compliance with Texas Accessibility Standards and ADA.** All parties to this Agreement shall make a good faith effort to verify that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board. If the Project contains $50,000 or more in pedestrian improvements, the Authority shall be responsible for arranging inspection by the Texas Department of Licensing and Regulation and for any required corrective actions. TxDOT will not accept the Project until the Texas Department of Licensing and Regulation has inspected and accepted all pedestrian elements of the Project.

25. **Gratuities.** Any person who is doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offers of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of TxDOT's Executive Director. Any person employed by a company under contract with the Authority to work on this Project will abide by the same rules regarding gratuities offered to employees of TxDOT, and shall also comply with policies of the Authority regarding receipt of gratuities.

26. **Conflict of Interests.** Neither TxDOT or the Authority shall assign an employee to the Project if the employee:

a. owns an interest in or is an officer or employee of a business entity that has or may have a contract with TxDOT or the Authority relating to the Project;

b. has a direct or indirect financial interest in the outcome of the Project (other than as an employee of TxDOT or the Authority);

c. has performed services regarding the subject matter of the Project for an entity other than TxDOT or the Authority that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with TxDOT or the Authority.

27. **Procurement and Property Management Standards.** The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

28. **Inspection of Books and Records.** The parties shall maintain all books,

documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make those materials available to TxDOT, the Authority, the FHWA, and the U.S. Office of the Inspector General for review and inspection at the possessory party's office during the contract period and for three (3) years from the date of TxDOT's acceptance of work defined under this contract or until any impending claims are resolved. Additionally, TxDOT, the Authority, and the FHWA shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

29. **ARRA Requirements.** For purposes of this Paragraph 29., the term "State" includes TxDOT, the term "local agency" includes the Authority, and the term "contractor" includes the Design/Build CDA Contractor. Whenever ARRA funds are used and the Authority is performing any work, either directly or through a contractor, it must comply with following provisions:

a. In accordance with Section 902 of ARRA, should this agreement involve the expenditure of ARRA funds, then the U.S. Comptroller General and its representatives shall have the authority to:

(1). examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and

(2). interview any officer or employee of the contractor or any of its subcontractors, or any State or local agency administering the contract regarding such contracts.

Nothing in this Paragraph 29.a. shall be interpreted to limit or restrict in any way the existing authority of the Comptroller General.

b. In accordance with Section 1515(a) of the ARRA, with respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

(1). to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to and involve transactions relating to the contract, subcontract, grant, or subgrant; and

(2). to interview any officer or employee of the contractor, grantee or subgrantee, or agency regarding such transactions.

Section 1515(b) further provides that nothing in the section previously mentioned shall be interpreted to limit or restrict in any way the existing authority of an inspector general.

c. The ARRA requires that the contractor report monthly employment information for its firm as well as that of all of its subcontractors. The contractor, similarly, shall include this reporting requirement in all of its subcontracts. Failing to include the requirement in agreements with subcontractors can serve as grounds for contract termination.

Form FHWA-1589, Monthly Employment Report, promulgated by the Federal Highway Administration (FHWA), captures the necessary monthly employment information and shall be submitted by the contractor on a regular basis to the local agency. It is the responsibility of the local agency to obtain this form from the prime contractor and any subcontractors and, the local agency shall verify the accuracy, completeness, and reasonableness of the data contained in the form. The local agency shall ensure that this form is submitted by the local agency to the State according to the policies and at the direction of the State.

In order to meet any other FHWA and ARRA reporting requirements, the local agency shall provide to the State all information requested by the State, including data or information in possession of contractors and subcontractors for completing other necessary reporting forms, and the information shall be submitted in the manner required and according to all due dates as set by the State.

Furthermore, the ARRA mandates that the U.S. Comptroller General's Office shall have authority to examine the records of the contractor, subcontractor, or local agency relating to the project at any time.

d. Whenever funds from the ARRA are distributed to a local agency, the local agency must complete its Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC), as required by OMB Circular A-133, and separately identify any ARRA expenditures for Federal Awards.

e. If the local agency will perform any work under this contract for which reimbursement will be provided by or through the State, the local agency must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The local agency shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the local agency or an employee of a firm that has been contracted by the local agency to perform oversight of the Project. The State in its discretion may deny reimbursement if the local agency has not designated a qualified individual to oversee the Project.

30. Office of Management and Budget (OMB) Audit Requirements. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-

133.

31. **Cost Principles.** The parties shall comply with the cost principles established in 48 CFR Chapter 31.

32. **Civil Rights Compliance.** The Authority shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and with Executive Order 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).

33. **Lobbying Certification.** In executing this Agreement, each signatory certifies that:

a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuing, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Authority shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

By executing this Agreement, the parties affirm this lobbying certification with respect to the Project and affirm this certification of the material representation of facts upon which reliance will be made. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

34. **Force Majeure.** The Authority shall be excused from any delay in or failure of performance by the Authority hereunder, which are caused by the following:

a. aircraft, or railroad-train incident;

b. acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena;

c. terrorism;

d. war or other national emergency; or

e. events or occurrences beyond the reasonable control of the Authority.

35. Reports and Plans to TxDOT.

a. The Authority shall deliver to TxDOT monthly progress reports for the Project prepared by the Authority's general engineering consultant.

b. The Authority shall be responsible for providing to TxDOT the reports required by the ARRA.

c. At the earliest possible date following Final Acceptance of the Project under the Design/Build CDA, but in no event more than 30 calendar days after completion of construction of the Project, the Authority will deliver to TxDOT the final design package.

36. Amendments. Any changes in the character, agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the Authority and TxDOT.

37. Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors, including without limitation any successor agency to the Authority. Other than as provided in the preceding sentence or otherwise in this Agreement, neither TxDOT nor the Authority shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other party to this Agreement, unless otherwise provided by law.

38. Relationship of the Parties. Except for the limited purposes expressly stated herein, nothing in this Agreement shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent between TxDOT and the Authority. Neither TxDOT nor the Authority waives, relinquishes, limits or conditions its governmental immunity or any other right to avoid liability which it otherwise might have to third parties.

39. Compliance with Applicable Laws. It is the Authority's obligation to monitor the Design/Build CDA Contractor retained for the Project to ensure compliance with all state and federal laws, including without limitation: (a) labor compliance standards are met in accordance with the provisions of the "Davis-Bacon and Related Acts" established

in 29 CFR Parts 1, 3 and 5; (b) wages of the contractors' employees are not less than those contained in the wage determination established by the U.S. Department of Labor. Additionally, the Authority shall be obligated to monitor said Design/Build CDA Contractor to ensure, to the extent otherwise required by law; (c) compliance with the anti-kickback regulations established in 29 CFR Part 3; (d) the provisions of Title VI of the Civil Rights Act of 1964 codified in 49 CFR Part 21 and 23 CFR §710.405(b); and (e) the equal employment opportunity standards established in 41 CFR Part 60 provided that neither the Authority nor TxDOT shall be liable for violations of the foregoing laws, orders and regulations by the Design/Build CDA Contractor. The Authority shall cause the Design/Build CDA Contractor to make available to the governmental agencies responsible for enforcement of the above-referenced laws, orders and regulations, all documentation and records necessary to review and audit the various requirements established under this Paragraph 39. To the extent required by law, the Authority's construction contract(s) shall include the provisions required by FHWA Form 1273, Required Contract Provisions, together with the applicable provisions of the Clean Air Act and Clean Water Act codified in 42 USC §1368, et seq., including but not limited to the certification of the National Pollution Discharge Elimination System permits established under Section 402 of the Clean Water Act. Compliance with these provisions shall be the responsibility of the Authority for all contracts let by the Authority subsequent to the effective date of this Agreement. In addition, the Authority shall, to the extent required by law, be responsible for compliance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. This Paragraph 39 shall operate and be construed solely as acknowledging and obligating the Authority to comply with the referenced Federal laws *only* to the extent that, and *only* for so long as, such compliance is otherwise required; if due to a change in the law or for any other reason any of the foregoing requirements are found to be inapplicable to the Authority and/or in connection with the Project, this Agreement shall be deemed modified automatically to delete said requirement(s). The Authority may rely on the legal opinion of its legal counsel in connection with any action taken or arising under this Agreement, provided that said opinion shall not bind TxDOT or the FHWA.

40. **DBE Program Requirements.** The Authority shall require its Design/Build CDA Contractor to comply with the Authority's Business Opportunity Policy (the "Policy") adopted on May 20, 2009, as may be amended. Additionally, the Authority shall require its Design/Build CDA Contractor to comply with the applicable DBE guidelines and regulations established in 49 CFR Part 26, as may be amended. In the event of a conflict between the Authority's policy and requirements of federal law, the latter shall control. The Authority shall provide quarterly reports to TxDOT regarding compliance with this paragraph.

41. **Officials Not to Benefit.** No member or delegate to the Congress of the United States of America shall be admitted to any share or part of this Agreement or to any benefit arising therefrom. No member, officer, or employee of the State of Texas, TxDOT, the Authority, or of a local public body during his/her tenure shall have interest in this Agreement or the benefits/proceeds thereof. Pursuant to the provisions of 31 USC

§1352, the Authority shall complete the "Certification for Federal-Aid Contracts Regarding Lobbying Activities", attached hereto as Exhibit D and made a part hereof for all purposes.

42. **Federal Debarment Certifications.** Pursuant to the provisions of 49 CFR Part 29, the Authority shall require its Design/Build CDA Contractor to complete the "Debarment Certification", attached hereto as Exhibit E and made a part hereof for all purposes. All subcontractors to the Design/Build CDA Contractor must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Exhibit F and made a part hereof for all purposes.

43. **Circulation of the Agreement.** Copies of this Agreement will be provided to, reviewed by, and relied upon by Design/Build CDA proposers.

44. **Limitations.** All covenants and obligations of TxDOT and the Authority under this Agreement shall be deemed to be valid covenants and obligations of said entities, and no officer, director, or employee of TxDOT or the Authority shall have any personal obligations or liability hereunder.

45. **Sole Benefit.** This Agreement is entered into for the sole benefit of TxDOT and the Authority and their respective successors and permitted assigns. Nothing in this Agreement or in any approval subsequently provided by either party hereto shall be construed as creating any liability in favor of any third party or parties against either TxDOT or the Authority, relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the Authority, or giving any benefits, rights, remedies, or claims to any other public or private person, firm, corporation or other entity.

46. **Authorization.** Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. If and to the extent that any approval or action by the Governor of the State of Texas is required to effectuate or authorize any provision of this Agreement, TxDOT agrees that it will use all reasonable efforts to obtain said approval or action. Each signatory on behalf of TxDOT and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

47. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured, or dictated such provision.

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by four (4) multiple counterparts on the dates shown herein below, effective on the date listed above.

CAMINO REAL REGIONAL MOBILITY AUTHORITY

By: _____
Raymond L. Telles
Executive Director

Date: NOVEMBER 17, 2009

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Amadeo Saenz, Jr.
Executive Director

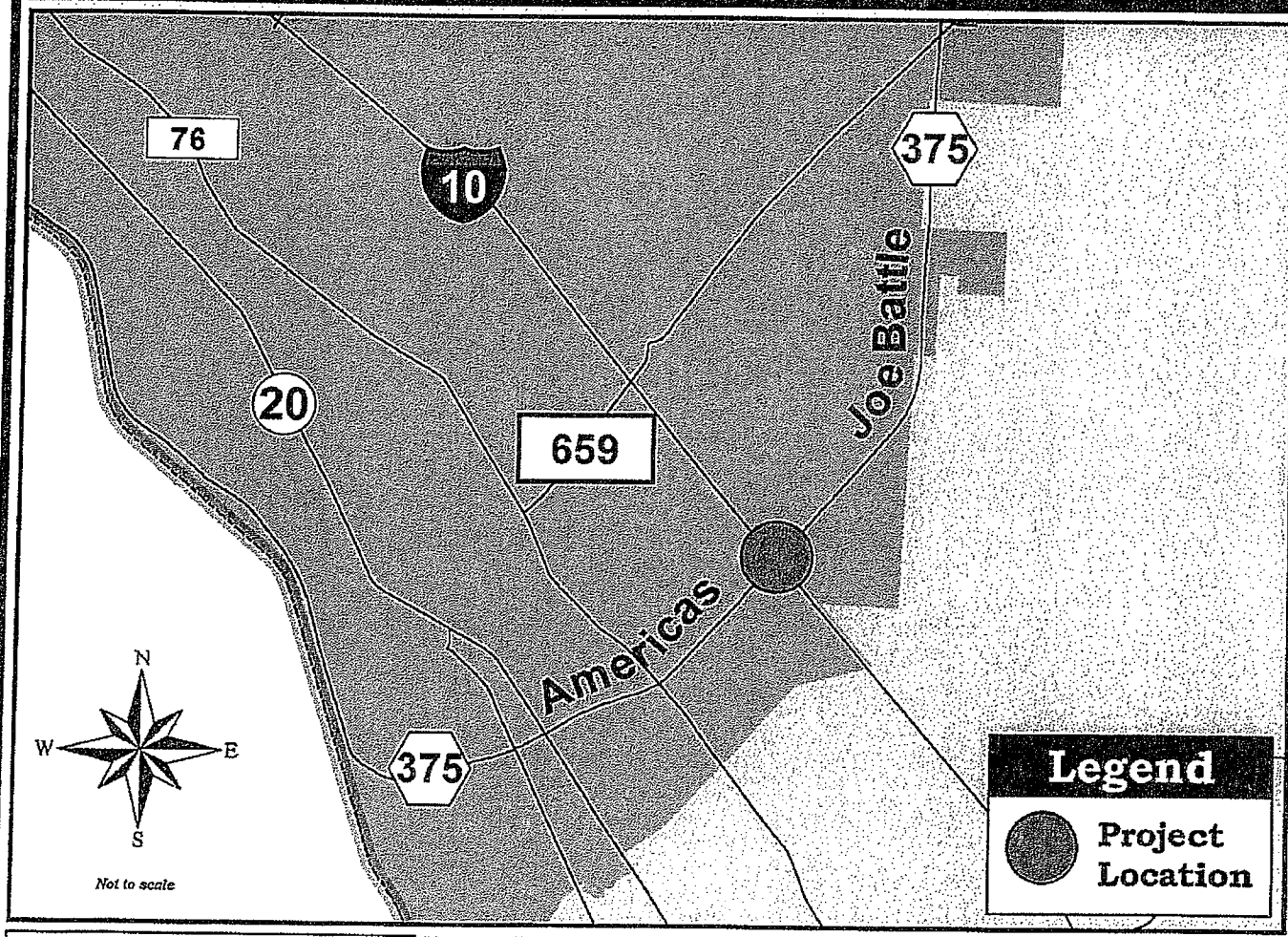
Date: Nov. 18, 2009

EXHIBIT A

Location Map of Project

(Map on following page)

PROJECT LOCATION MAP
City of El Paso, Texas



Texas Department of Transportation
EL PASO DISTRICT

CSJ 2121-04-065
I-10 @ LP 375 (Americas)
4 of 8 Connectors

Revised: July 15, 2009

EXHIBIT B

Project Description and Scope of Work

Description of existing facility

The existing interchange at IH 10 and Loop 375 in east El Paso County is a two level interchange with two continuous frontage roads and clover leaf ramps for interchange between the frontage roads. The main lanes of IH 10 and its frontage roads are at-grade on the first level. The main lanes and frontage roads of Loop 375 are at the second level. Traffic movements between the two freeways are accomplished by means of the clover leaf ramps that connect the frontage roads. There are no direct connections between the main lanes of IH10 and Loop 375.

Scope of Work

The proposed scope of work includes the design and construction of the following four, of the ultimate eight, direct connect ramps that will provide continuous traffic flow between the main lanes of the two freeways:

1) eastbound IH 10 to northbound Loop 375,

2) southbound Loop 375 to westbound IH 10,

3) westbound IH 10 to southbound Loop 375, and

4) northbound Loop 375 to westbound IH 10.

All of the above will be constructed as 2-lane direct connectors except for northbound Loop 375 to westbound IH 10 which will be constructed as a single lane direct connector. Any work on the existing main lanes of IH 10 and Loop 375 will be limited to what is necessary to accommodate construction of the proposed four direct connectors and the relocated access ramps. Segments of both the IH 10 and Loop 375 frontage roads will be realigned to accommodate the direct connectors. In addition to realignment, segments of the IH 10 frontage road will be widened to facilitate 3 lanes of traffic. The westbound frontage road bridge, east of the interchange will also be replaced. The scope also includes drainage revisions, including retention, necessary to accommodate construction of the proposed four direct connectors, relocation of existing and addition of proposed signage and replacement/relocation of existing traffic and pedestrian signals.

Additionally, the proposed scope includes realigning and reconstructing any segments of the four existing clover leaf ramps necessary to accommodate the structural elements of the four direct connectors including any modifications to existing drainage structures and replacement of the existing highmast lighting system. The project design will be

consistent with aesthetic treatment of the existing interchange and will incorporate landscaping elements.

The proposed work will include the acquisition of all Right of Way required to complete all eight direct connect ramps of the ultimate interchange, subject to budget limitations, but will only include adjustments to utilities that are within the project limits and are impacted by the proposed construction.

EXHIBIT C

Schedule of Payments

Exhibit C is to be added by the Authority by amendment after a Design/Build CDA contract is awarded.

EXHIBIT D

Certification for Federal-Aid Contracts Regarding Lobbying Activities

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require the language of this certification to be included in all lower tier subcontracts which exceed $100,000, and that all such recipients shall certify and disclose accordingly.

_____
Signature of Certifying Official

_____
Typed Name

_____
Title

_____

Date

EXHIBIT E

Debarment Certification

The CONTRACTOR certifies to the best of its knowledge and belief, that its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public* transaction or contract under a public* transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity* with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

Have not within a three-year period preceding this application/proposal had one or more public* transactions terminated for cause or default.

Where the CONTRACTOR is unable to certify to any of the statements in this certification, such CONTRACTOR shall attach an explanation to this certification.

*federal, state or local

_____
Signature of Certifying Official

_____
Title

_____
Date

Form 1734-A
4-89

EXHIBIT F

Lower Tier Participant Debarment Certification
(Negotiated Contracts)

_____, being duly sworn
(insert name of certifying official)
or under penalty of perjury under the laws of the United States, certifies that
neither _____ nor its
(insert name of lower tier participant)
principals are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action. Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

_____
Signature of certifying Official

_____
Title

_____
Date of Certification

Form 1734-A
4-89

AMENDMENT NO. 1 TO

PROJECT DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 1 TO THE PROJECT DEVELOPMENT AGREEMENT (this "Amendment") effective as of the 8th day of March, 2010 (the "Effective Date"), is made by and between the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, and the Camino Real Regional Mobility Authority ("Authority"), a political subdivision of the State of Texas.

WHEREAS, TxDOT and the Authority entered into a Project Development Agreement, effective as of November 19, 2009 (the "PDA") for the purpose of clarifying the relationship between TxDOT and the Authority in connection with the development, design, and construction of the interchange at IH 10 and Loop 375 in El Paso County (the "Project"); and

WHEREAS, the Authority anticipates developing the Project through a Design/Build Comprehensive Development Agreement as authorized under Sections 370.305 through 370.312, Transportation Code; and

WHEREAS, Paragraph 13 of the PDA addresses certain operations and maintenance requirements prior to Final Acceptance and requires that the Request for Detailed Proposals ("RFDP") issued by the Authority include a construction maintenance agreement; and

WHEREAS, TxDOT has indicated that it no longer desires to require that the scope of work for the Project include a construction maintenance agreement; and

WHEREAS, the parties have mutually agreed to clarify the Authority's obligations regarding roadway maintenance under Paragraph 13 of the PDA; and

WHEREAS, pursuant to Paragraph 36 of the PDA, modifications to the PDA must be made in writing; and

WHEREAS, capitalized terms not defined herein shall have the meanings given to them in the PDA.

NOW THEREFORE in consideration of the agreements herein contained, the Parties hereto agree as follows:

1. **Amendment to Paragraph 13.** The parties hereby agree to amend Paragraph 13 of the PDA by deleting it in its entirety and replacing it with the following:

13. Operation and Maintenance. The Authority will assume responsibility for operation and maintenance of new and existing roadway facilities within the Project limits upon the Authority's issuance of a notice to proceed for construction of the Project. TxDOT will assume responsibility for operations and maintenance of the new and existing roadway facilities within the Project limits upon Final Acceptance, and the Authority shall have no further responsibility

for operations or maintenance activities unless otherwise agreed to by the parties.

2. **Ratification.** Except as expressly amended by this Amendment, the PDA and the Exhibits thereto shall remain in full force and effect. None of the rights, interests and obligations existing and to exist under the PDA are hereby released, diminished or impaired, and the parties hereby reaffirm all covenants, representations and warranties, obligations and agreements in the PDA. To the extent any provisions of the PDA are deleted by virtue of this Amendment, such provisions shall nevertheless survive for purposes of enforcing rights or obligations as provided in this Amendment.

3. **Execution in Counterparts.** For the convenience of the parties, this Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. **Governing Law.** This Amendment shall be governed and construed in accordance with the terms of the PDA.

The undersigned signatory for TxDOT and the Authority hereby represents and warrants that he has full and complete authority to enter into this Amendment to the PDA on behalf of the party represented, that such Amendment has received the approval necessary from the organization he represents, and to bind such party in accordance with the terms and conditions of the PDA as amended hereby.

IN WITNESS HEREOF, TxDOT and the Authority have executed this Amendment effective as of the date set forth above.

TEXAS DEPARTMENT OF TRANSPORTATION

By: Amadeo Saenz
Name: Amadeo Saenz, Jr.
Title: Executive Director
Date: 3/8/10

CAMINO REAL REGIONAL MOBILITY AUTHORITY

By: Raymond Telles
Name: Raymond L. Telles
Title: Executive Director
Date: FEBRUARY 26, 2010

AMENDMENT NO. 2 TO

PROJECT DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 2 TO THE PROJECT DEVELOPMENT AGREEMENT (this "Amendment") effective as of the 20th day of July, 2010 (the "Effective Date"), is made by and between the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, and the Camino Real Regional Mobility Authority ("Authority"), a political subdivision of the State of Texas.

WHEREAS, TxDOT and the Authority entered into a Project Development Agreement, effective as of November 19, 2009 for the purpose of clarifying the relationship between TxDOT and the Authority in connection with the development, design, and construction of the interchange at IH 10 and Loop 375 in El Paso County (the "Project"); and

WHEREAS, the Project Development Agreement was amended effective March 8, 2010, for the purpose of removing the requirement that the scope of work for the Project include a construction maintenance agreement (the Project Development Agreement, as amended, is hereinafter referred to as the "PDA"); and

WHEREAS, Paragraph 5 and Exhibit B of the PDA address the scope of work for the Project, providing that the scope of work shall include development and construction of four direct connectors to the IH 10 and Loop 375 interchange; and

WHEREAS, the parties have mutually agreed to reduce the scope of work as reflected in Paragraph 5 and Exhibit B of the PDA to include the development and construction of three direct connectors rather than four, with the fourth direct connector to be included in the scope of work subject to availability of sufficient funding; and

WHEREAS, Paragraph 13 of the PDA addresses certain operation and maintenance requirements for the Project; and

WHEREAS, the parties have mutually agreed to clarify the Authority's obligations regarding roadway maintenance under Paragraph 13 of the PDA; and

WHEREAS, pursuant to Paragraph 36 of the PDA, modifications to the PDA must be made in writing; and

WHEREAS, capitalized terms not defined herein shall have the meanings given to them in the PDA.

NOW THEREFORE in consideration of the agreements herein contained, the Parties hereto agree as follows:

1. Amendment to Paragraph 5. The parties hereby agree to amend Paragraph 5 of the PDA by deleting Paragraph 5.a in its entirety and replacing it with the following:

5. **Scope of Work.**

a. The scope of work will include development and construction of the three direct connectors to the IH 10 and Loop 375 Interchange as described in Exhibit B, and it is currently anticipated that the full amount of the Project funding described in Paragraph 2.a. will be available for the Project. Subject to the availability of sufficient Project funding, an optional fourth direct connector may also be included in the scope of work as described in Exhibit B.

2. **Amendment to Paragraph 11.** The parties hereby agree to amend Paragraph 11 of the PDA by deleting Paragraph 11.c.(1) in its entirety and replacing it with the following:

(1). The Design/Build CDA Contractor will, pursuant to the Contract Documents, have responsibility for quality control and will hire a Construction Quality Control Manager to be in charge of construction quality control of internal procedures used by the Design/Build CDA Contractor, its suppliers and subcontractors, to ensure that development work meets project plans and specifications.

3. **Amendment to Paragraph 11.** The parties hereby agree to amend Paragraph 11 of the PDA by deleting the second sentence of Paragraph 11.c.(2) in its entirety and replacing it with the following:

The Authority will use TxDOT as its agent to perform these obligations and all associated costs will be charged to total project costs - up to a maximum of $3,250,000 for the development and construction of the three direct connectors to the IH 10 and Loop 375 Interchange as described in Exhibit B; or, if the optional fourth direct connector is included in the scope of work, then up to a maximum of $3,500,000.

4. **Amendment to Paragraph 11.** The parties hereby agree to amend Paragraph 11 of the PDA by deleting the fifth sentence of Paragraph 11.d. in its entirety and replacing it with the following:

Oversight expenses incurred by TxDOT will be charged to total project costs, but shall be included in the $3,250,000 (or $3,500,000 if the optional fourth direct connector is included in the scope of work) noted in Paragraph 11.c.(2). above and subject to the limitation specified therein.

5. **Amendment to Paragraph 13**. The parties hereby agree to amend Paragraph 13 of the PDA by deleting it in its entirety and replacing it with the following:

13. Operation and Maintenance. The Authority will require its Design/Build Contractor to assume the responsibilities set forth as Contractors Responsibility for Work in Item 7.14 of the Standard Specifications for Construction and Maintenance of Highways, Street, and Bridges adopted by

TxDOT on June 1, 2004 (the "TxDOT Standard Specifications"), with the exception that the Design/Build Contractor will not be reimbursed for repair of damage to temporary and permanent crash cushion attenuators, guard rail end treatments, guard rail, and potholes, such assumption to be effective upon the issuance of a notice to proceed for construction to the Design/Build CDA Contractor. TxDOT will assume responsibility for operations and maintenance of the roadway facilities upon Final Acceptance, and neither the Authority or its Design/Build CDA Contractor (except for work covered under its warranty obligations) shall have any further responsibility for operations or maintenance activities unless otherwise agreed to by the parties. To the extent of any inconsistency between the provisions of this Agreement and those of Item 7.14 of the TxDOT Standard Specifications, this Agreement shall prevail.

6. **Amendment to Exhibit A.** The parties hereby agree to amend Exhibit A by deleting "4 of 8 Connectors" and replacing it with "3 of 8 Connectors."

7. **Amendment to Exhibit B.** The parties hereby agree to amend Exhibit B by deleting the Section captioned "Scope of Work" in its entirety and replacing it with the following:

Scope of Work

The proposed scope of work includes the design and construction of the following three, of the ultimate eight, direct connect ramps that will provide continuous traffic flow between the mainlanes of the two freeways:

1) eastbound IH 10 to northbound Loop 375

2) southbound Loop 375 to westbound IH 10, and

3) northbound Loop 375 to westbound IH 10.

All of the above will be constructed as 2-lane direct connectors except for the northbound Loop 375 to westbound IH 10 which will be constructed as a single lane direct connector. Any work on the existing mainlanes of IH 10 and Loop 375 will be limited to what is necessary to accommodate construction of the proposed three direct connectors and the relocated access ramps. Segments of both IH 10 and Loop 375 frontage roads will be realigned to accommodate the direct connectors. The scope also includes drainage revisions, including retention, necessary to accommodate construction of the three direct connectors, modification/relocation of existing and addition of proposed signage and replacement/relocation of existing and addition of proposed signage, and replacement/relocation of existing traffic and pedestrian signals.

Additionally, the proposed scope includes realigning and reconstructing any segments of the four existing cloverleaf ramps necessary to accommodate the

structural elements of the three direct connectors, including any modifications to existing drainage structures and replacement of the existing highmast lighting system. The project design will complement the aesthetic treatment of the existing interchange.

The proposed work will include the acquisition of all Right of Way required to complete all eight direct connect ramps of the ultimate interchange, but will only include adjustments to utilities that are within the project limits and are impacted by the proposed construction.

Optional Scope of Work

In the event sufficient project funding is or becomes available, the following optional fourth direct connector may also be included in the scope of work:

1) westbound IH 10 to southbound Loop 375

This connector will be a 2-lane direct connector. Any work on the existing mainlanes of IH 10 and Loop 375 will be limited to what is necessary to accommodate construction of the optional direct connector and the relocated access ramps. Segments of both IH 10 and Loop 375 frontage roads will be realigned to accommodate this connector. The scope also includes drainage revisions, including retention, necessary to accommodate construction of the direct connector, modification/relocation of existing and addition of proposed signage, and replacement of the westbound frontage road bridge east of the intersection and adjustment of any utilities in conflict with the construction of this direct connect ramp.

Additionally, the scope for the optional connector includes realigning and reconstructing any segments of the existing cloverleaf ramps necessary to accommodate the structural elements of the direct connector including any modifications to existing drainage structures and replacement of the existing highmast lighting system. The optional connector design will complement the aesthetic treatment of the existing interchange.

Notwithstanding the foregoing, if the direct connector described above is not financially feasible to develop at this time, but another of the planned future direct connectors can be developed within available financial resources, the parties may mutually agree to include a different direct connector as an optional scope of work. Specific details as to the alternate direct connector will be agreed to by the parties.

8. **Ratification**. Except as expressly amended by this Amendment, the PDA and the Exhibits thereto shall remain in full force and effect. None of the rights, interests and obligations existing and to exist under the PDA are hereby released, diminished or impaired, and the parties hereby reaffirm all covenants, representations and warranties, obligations and agreements in the

PDA. To the extent any provisions of the PDA are deleted by virtue of this Amendment, such provisions shall nevertheless survive for purposes of enforcing rights or obligations as provided in this Amendment.

9. Execution in Counterparts. For the convenience of the parties, this Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. Governing Law. This Amendment shall be governed and construed in accordance with the terms of the PDA.

The undersigned signatory for TxDOT and the Authority hereby represents and warrants that he has full and complete authority to enter into this Amendment to the PDA on behalf of the party represented, that such Amendment has received the approval necessary from the organization he represents, and to bind such party in accordance with the terms and conditions of the PDA as amended hereby.

IN WITNESS HEREOF, TxDOT and the Authority have executed this Amendment effective as of the date set forth above.

TEXAS DEPARTMENT OF TRANSPORTATION

By: Amadeo Saenz
Name: Amadeo Saenz, Jr.
Title: Executive Director
Date: 7/20/10

CAMINO REAL REGIONAL MOBILITY AUTHORITY

By: Raymond Telles
Name: Raymond L. Telles
Title: Executive Director
Date: 06/30/10

ATTACHMENT H

TRZ Agreement

CITY CLERK DEPT.
10 JUN 23 AM 8:15

12 A

TRZ NO. 2

STATE OF TEXAS §

COUNTY OF EL PASO §

AGREEMENT WITH RESPECT TO TRANSPORTATION REINVESTMENT ZONE NUMBER TWO

THIS AGREEMENT is made by and between the City of El Paso, Texas, a municipal corporation organized under the laws of the State of Texas (the "City"), and the Camino Real Regional Mobility Authority, a regional mobility authority organized and existing under Chapter 370 of the Texas Transportation Code, as amended (the "CRRMA").

WITNESSETH:

WHEREAS, on July 22, 2008 the City Council of the City of El Paso endorsed the 2008 Comprehensive Mobility Plan (the "2008 CMP") which identified transportation projects vital to improving the region's transportation system by providing multiple modes of transportation and projects that facilitate the safe and reliable movement of goods and people;

WHEREAS, on August 19, 2008 the City Council of the City of El Paso entered into a Memorandum of Understanding with the CRRMA to work in a cooperative manner to complete the projects identified in the 2008 CMP;

WHEREAS, the City has established Transportation Reinvestment Zone Number Two, City of El Paso, Texas (the "Zone") to promote transportation projects described by Section 222.104 of the Texas Transportation Code, as amended ("Section 222.104") that cultivate development and redevelopment of the Zone, pursuant to Section 222.106 of the Texas Transportation Code, as amended (the "Act");

WHEREAS, the City will pay into the Tax Increment Fund (as defined in Section I.A hereof) an amount equal to the Tax Increment produced by the City, in accordance with Section 222.106(h) of the Act;

WHEREAS, in accordance with Section 222.106(i) of the Act, money deposited to the Tax Increment Fund must be used to fund projects authorized under Section 222.104;

WHEREAS, the City and the CRRMA intend to enter into one or more agreements (the "Pass-through Agreement") with the Texas Department of Transportation under Section 222.104 for the design, development, financing, construction, maintenance, or operation of the Projects (as defined in Article I hereof) located within the Zone;

WHEREAS, the City and the CRRMA have determined that it would be desirable and further the public purposes of the Act for the CRRMA to negotiate and also be a party to the Pass-through Agreement for the development of such Projects;

WHEREAS, the City and the CRRMA desire that, effective with the execution and delivery of a Pass-through Agreement for the development of one or more of the Projects, the CRRMA obtain debt financing for the applicable Project(s);

WHEREAS, pursuant to Section 370.303 of the Texas Transportation Code, the City is authorized to enter into and make payments under agreements with regional mobility authorities (such as the CRRMA) to acquire, construct, maintain, or operate a transportation project, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by a regional mobility authority;

WHEREAS, on February 23, 2010, the CRRMA and the City entered into an amended and restated agreement (the "Previous Agreement") for the development and construction of one or more of the Projects and the transfer and pledge of revenues relating to the City's Transportation Reinvestment Zone Number One ("TRZ No. 1") which had been created by the City;

WHEREAS, the City had certain concerns with respect to the establishment of the TRZ No. 1 and determined that it was in the best interest of the City to establish two transportation reinvestment zones, including the Zone, in partial replacement of the TRZ No. 1;

WHEREAS, the TRZ No. 1 has been repealed and the Zone has been established; and

WHEREAS, no CRRMA Obligations under the Previous Agreement have been issued and the CRRMA and the City desire to terminate the Previous Agreement and enter into this Agreement and the TRZ No. 3 Agreement (as defined below) in place thereof;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed that the Previous Agreement is hereby terminated in its entirety and the parties hereby agree as follows:

I.
DEFINITIONS

"Act" shall mean Section 222.106, Transportation Code, as amended.

"Agreement" shall mean this Agreement between the City and the CRRMA.

"Appropriate" or "Appropriated" shall mean the adoption by the City Council of a budget or amendments to the budget for a Fiscal Year which includes the TRZ Contract Payments and any other payments required to be made by the City under this Agreement during the respective Fiscal Year.

"Available Funds" shall mean money Appropriated by the City from any lawfully available funds of the City, including money in the City's general fund that may lawfully be used with respect to any payment obligated or permitted under this Agreement.

"Captured Appraised Value" shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1 of any year less the Tax Increment Base of the Zone.

"City" shall mean the City of El Paso, Texas.

"City Council" shall mean the City Council of the City.

"CRRMA" shall mean the Camino Real Regional Mobility Authority.

"CRRMA Obligations" shall mean the bonds, loans, notes or other contractual obligations which the CRRMA may incur from time to time pursuant to Article III hereof to finance one or more of the Projects.

"CRRMA Obligation Payment Date" shall mean the first payment date on any outstanding CRRMA Obligation in which there is not adequate capitalized interest set aside to make all payments due on such date and any payment date thereafter for so long as the CRRMA Obligations are outstanding.

"Debt Governance Document" shall mean collectively one or more trust indentures, bond resolutions, loan agreements, resolutions and other applicable documents which authorize the issuance, and control the terms, of one or more CRRMA Obligations.

"Event of Nonappropriation" shall mean the failure of the City to Appropriate for any Fiscal Year, sufficient funds to pay the TRZ Contract Payments, or the reduction of any previously Appropriated money to an amount insufficient to permit the City to pay the TRZ Contract Payments from Available Funds.

"Fiscal Year" shall mean the 12 month fiscal period of the City currently commencing on September 1, and ending on August 31 of the following year, or such other annual accounting period as the City may hereafter adopt.

"Governmental Accounting Standards Board" shall mean the recognized official source of generally accepted accounting principles (GAAP) for state and local governments.

"Interlocal Cooperation Act" shall mean Chapter 791, Government Code, as amended.

"Pass-through Agreement" shall mean one or more agreements between the Texas Department of Transportation and the CRRMA to be entered into pursuant to Section 222.104 in furtherance of the Projects.

"Paying Agent" shall mean the financial institution, if any, designated as paying agent or trustee in the Debt Governance Document or other agreement relating to the administration or payment of the applicable CRRMA Obligations.

"Payment Fund" shall mean one or more funds established by the CRRMA in the Debt Governance Document into which payments made pursuant to this Agreement are to be deposited.

"Projects" shall refer to two (2) projects identified within the 2008 Comprehensive Mobility Plan as recipients of Zone funds; namely, Loop 375 at FM 659 (Zaragoza) and Loop 375 at I-10/Americas Interchange, such Projects to be the subject of one or more Pass-through Agreements.

"Section 222.104" means Section 222.104, Texas Transportation Code, as amended.

"Tax Increment" shall mean the amount of property taxes levied and collected each year by the City on the Captured Appraised Value.

"Tax Increment Base" shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1 of the year in which the Zone was designated as a transportation reinvestment zone.

"Tax Increment Fund" shall mean the Tax Increment Fund created by the City for the Zone pursuant to the TRZ Ordinance including any subaccount therein into which all Tax Increment shall be deposited by the City.

"TRZ Contract Payment" shall mean, while any CRRMA Obligations are outstanding, an amount of money which, when added to the amount then on deposit in the Payment Fund, will equal the amount of (i) interest to become due on all the outstanding CRRMA Obligations on the next CRRMA Obligation Payment Date, (ii) the principal portion of the CRRMA Obligations then due, and (iii) the reasonable fees and expenses of the Paying Agent, if any.

"TRZ No. 3 Agreement" shall mean the Agreement with respect to Transportation Reinvestment Zone Number Three between the City and the CRRMA of even date herewith.

"TRZ Ordinance" shall mean Ordinance No. 017332 adopted by the City Council on May 25, 2010 establishing the Zone and the Tax Increment Fund, as such TRZ Ordinance may be amended from time to time.

"Zone" shall mean Transportation Reinvestment Zone Number Two, City of El Paso, Texas which the City has created pursuant to the TRZ Ordinance.

II.
PASS-THROUGH AGREEMENT

In accordance with Texas law, including without limitation the Interlocal Cooperation Act, and in consideration of the mutual covenants made in this Agreement, the CRRMA agrees to negotiate, finalize, execute and deliver to the Texas Department of Transportation the Pass-through Agreement(s) necessary to facilitate the design, development, financing, construction, maintenance and operation of the Projects in exchange for the power to incur CRRMA Obligations. To the extent required by Texas Law in connection with the financing of the Projects, the City agrees to also be a party to the Pass-through Agreement.

III.
CRRMA OBLIGATIONS

A. General Statement.

1. The parties have agreed that the CRRMA has the authority to issue CRRMA Obligations to develop the Projects, which CRRMA Obligations are to be repaid, in whole or in part, from moneys to be paid by the City to the CRRMA from Tax Increment and other Available Revenues pursuant to this Agreement; provided, however, that the aggregate principal amount of such obligations and any obligations issued by the CRRMA in connection with the TRZ No. 3 Agreement shall not exceed $70 million plus all related financing costs. The City acknowledges that it has received at least 90 days prior notice of the issuance of the CRRMA Obligations in accordance with Section 370.261 of the Texas Transportation Code.

2. Notwithstanding anything in this Article III to the contrary, in the event that (i) the interest rate on a CRRMA Obligation (including a loan from the State Infrastructure Bank) is reasonably expected to exceed 5.0% (without reference to any subsidy), and/or (ii) such CRRMA Obligation cannot be structured as a direct subsidy "Build America Bond" (as defined in the American Recovery and Reinvestment Act of 2009), the City and the CRRMA agree that the following procedures shall apply. In such event, before issuing or incurring such CRRMA Obligation, the CRRMA shall provide notice to the City and upon notice, the CRRMA and the City shall meet and discuss in good faith a mutually satisfactory alternative financing program for the Project to be financed, in whole or in part. Such financing program shall have advantageous commercial terms available in the then-existing financial markets. In the event that the parties do not mutually determine, within sixty (60) days following such notice, a financing program for such Project with an interest rate lower than the interest rate on the proposed CRRMA Obligation, the CRRMA may issue or incur such CRRMA Obligation.

3. Unless otherwise agreed by the parties hereto, a minimum of 50% of any subsidy received in connection with any CRRMA Obligation which is issued as a "Build America Bond" shall be used to pay debt service on such CRRMA Obligation.

4. Unless otherwise agreed by the parties hereto, any reserve fund established in connection with the issuance of any CRRMA Obligations shall be funded (i) no more rapidly than level amortization over 60 months from the date of issuance of such obligations, (ii) from Tax Increment revenues and (iii) in accordance with applicable law, including Federal tax law.

5. The City represents that the Zone has been validly created and is currently in existence as of the date hereof.

B. Project Delivery and Execution. Upon receipt of all applicable approvals, including execution of this Agreement, the necessary Pass-through Agreement and any other related agreements, the CRRMA shall be responsible for the design, development, financing, construction, maintenance and operation of the Projects, as more fully described within such approvals and agreements. The CRRMA, its consultants or contractors shall develop Project milestones and construction schedules, as applicable, for each of the Projects and submit them to

the City for informational purposes. The CRRMA, its consultants or contractors shall work diligently on meeting said milestones during project development to complete construction plans and specifications that are acceptable and approved by the Texas Department of Transportation and that allow for construction of the Projects. Project schedules may include multiple construction phases to complete the Projects.

C. Power to Incur CRRMA Obligations. Subject to the terms of this Agreement, the CRRMA shall have the power from time to time to issue and incur CRRMA Obligations to develop the Projects upon such terms and conditions as the CRRMA shall determine to be necessary or desirable to fund the Projects; provided however, that the CRRMA shall seek to capitalize interest on the Projects to the greatest extent permitted by applicable law (unless otherwise agreed by the City). The CRRMA Obligations may be in the form of one or more bonds, loans, notes, or other form of contractual obligations in exchange for the obligations of the CRRMA to repay such costs, in whole or in part, from future payments made by the City to the CRRMA pursuant to this Agreement. The number, type and frequency of such CRRMA Obligations shall be in the sole discretion of the CRRMA; provided, however, that the aggregate principal amount of such obligations and any obligations issued by the CRRMA in connection with TRZ Agreement No. 3 shall not exceed $70 million plus all related financing costs, as noted herein.

D. CRRMA Obligations.

1. To fund the Projects, the CRRMA may issue its CRRMA Obligations from time to time in an aggregate amount necessary to finance and pay costs of the Projects (including amounts necessary to fund reserves and capitalized interest accounts and to pay costs of issuance) which will be repaid by the CRRMA, in whole or in part, from payments made by the City pursuant this Agreement. The deposit and disbursement of CRRMA Obligations proceeds shall be made in accordance with the documents authorizing their issuance. The City shall have no financial obligation to make any principal or interest payment, in whole or in part, on behalf of the CRRMA to fund the CRRMA's obligations except in accordance with this Agreement.

2. CRRMA Obligations issued by the CRRMA shall be secured, in whole or in part, by funds deposited from time to time in the Payment Fund. The CRRMA agrees to provide to the City, upon request, copies of any proposed Debt Governance Document in connection with any issuance of CRRMA Obligations.

E. Accounting. Complete books and records shall be maintained by the City showing deposits to and disbursements from the Tax Increment Fund. Complete books and records shall be maintained by the Paying Agent (or in the absence of a Paying Agent, the CRRMA) showing deposits to and disbursements from the Payment Fund or other Project-related funds. All such books and records shall be deemed complete if kept in accordance with the Governmental Accounting Standards Board's principles and in accordance with the provisions of the Act. Such books and records shall be available for examination by the duly authorized officers or agents of the City or the CRRMA during normal business hours upon request made not less than five (5) business days prior to the date of such examination. The City and the Paying Agent (or in the absence of a Paying Agent, the CRRMA) shall maintain such

books and records as long as any CRRMA Obligations remain outstanding and for four (4) years thereafter, all subject to the requirements of the Act.

F. Pledge of Payment Fund. The CRRMA may pledge and assign all or a part of the Payment Fund and amounts therein to the owners and holders of CRRMA Obligations or to a trustee acting on their behalf.

G. Depository. Any moneys received from investing and reinvesting the moneys paid by the City to the CRRMA shall remain in the Payment Fund until used by the CRRMA for the purposes permitted by this Agreement; provided, however, that these funds shall be accounted for separately. Moneys in the Payment Fund may be invested and reinvested by the CRRMA only in investments which would be eligible for investment by the City pursuant to the provisions of the City's Investment Policy and the Public Funds Investment Act (Chapter 2256, Texas Government Code).

IV.
DUTIES AND RESPONSIBILITIES OF THE CITY

A. Tax Increment Fund. In the TRZ Ordinance, the City shall establish a separate fund (which may include subaccounts if necessary) in the City treasury into which the Tax Increment from the Zone shall be deposited (the "Tax Increment Fund"). During the term of this Agreement, contingent solely upon execution and delivery of a Pass-through Agreement for the development of one or more of the Projects, the City will transfer to the Payment Fund, on a monthly basis on the first business day of each month thereafter, all monies then held in the Tax Increment Fund, and the City consents to the CRRMA's use of such Tax Increment as a pledge for, and to make payment on, the CRRMA Obligations. The City shall cooperate with the Paying Agent and the CRRMA in the efficient transfer of the Tax Increment to the Payment Fund in accordance with this Agreement and shall comply with all reasonable requests of the Paying Agent or the CRRMA related to such transfer and/or the administration of the Tax Increment Fund.

B. Levy of Tax Increment. Until the CRRMA has issued all CRRMA Obligations which the CRRMA is authorized to issue pursuant to Article III hereof and those CRRMA Obligations, together with interest thereon, have been fully paid or provision for payment thereof shall have been made in accordance with their terms, the City covenants and agrees to annually assess, levy and collect its ad valorem taxes within the Zone and not to terminate or dissolve the Zone.

C. TRZ Contract Payments.

1. The CRRMA shall include a covenant in each Debt Governance Document that at least thirty (30) days prior to every CRRMA Obligation Payment Date the Paying Agent (or in the absence of a Paying Agent, the CRRMA) shall provide to the City written notice of the amount of the TRZ Contract Payment due on such CRRMA Obligation Payment Date.

2. Subject to Article XV, the City shall pay to the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of such CRRMA Obligation), at least three (3)

business days prior to each CRRMA Obligation Payment Date, the TRZ Contract Payments then due.

3. All TRZ Contract Payments shall be applied in accordance with the terms of any applicable Debt Governance Document pursuant to which the relevant CRRMA Obligations are issued.

4. To assist the City with its budgeting, the Paying Agent (or in the absence of a Paying Agent, the CRRMA) shall prepare a periodic report showing any balance maintained in the Payment Fund and the resulting schedule of anticipated TRZ Contract Payments, if any, after taking into account the projected Tax Increment and earnings on the Payment Fund; provided however, that the City shall be obligated to make the TRZ Contract Payments in accordance with the provisions of this Agreement regardless of the accuracy of such report. The information with respect to projected Tax Increment deposits shall be provided by the City. Such report shall be updated from time to time to take into account actual deposits to the Payment Fund and earnings thereon.

D. Current Expenses. The City's obligation to make the TRZ Contract Payments shall constitute a current expense of the City in the Fiscal Year during which such payments are due and shall not constitute an indebtedness of the City within the meaning of the laws of the State of Texas.

E. City's Obligation to be Absolute. Subject to the limitation set out in Artricle XV hereof, the obligations of the City hereunder shall be absolute and unconditional. The covenant to pay TRZ Contract Payments shall be an independent covenant. The City shall have no right to withhold, set-off or reduce the amount of TRZ Contract Payments or the obligation to make such TRZ Contract Payments or other payments when due hereunder regardless of any claim or dispute it may have regarding this Agreement or other agreements with the CRRMA. Subject to Article XV, there shall be no abatement of TRZ Contract Payments for any reason whatsoever.

Notwithstanding anything herein to the contrary, the obligation of the City to transfer the Tax Increment as set forth in this Agreement shall be absolute, unconditional and an independent covenant. During the term of this Agreement and thereafter until such time as all CRRMA Obligations issued and to be issued pursuant to this Agreement have been fully paid or provision for payment thereof shall have been made in accordance with their terms, the City will not suspend, offset, withhold, or discontinue any transfer of the Tax Increment required to be made by the City to the CRRMA pursuant to this Agreement regardless of any claim or dispute the City may have regarding this Agreement or other agreements with the CRRMA and will not terminate this Agreement except as specifically permitted by this Agreement.

F. Limitation of Amount of Payment. The obligation of the City to the CRRMA under this Agreement and the TRZ No. 3 Agreement is limited to the aggregate principal amount of $70 million plus all financing costs and interest charges for any bonds, loan, notes or other contractual obligations to finance the Projects and projects authorized by the TRZ No. 3 Agreement. The City shall not be responsible for the payment of any project cost overrun in excess of $70 million nor the cost of financing any project cost overrun in excess of $70 million.

G. Allocated Funds; Limitation of Duties. The duty of the City to pay money to the CRRMA for any purpose under this Agreement is limited in its entirety by the provisions of this Agreement. The payments and covenants herein provided for shall be the entire and complete compensation of the CRRMA for its services and expenses in connection herewith.

H. Collection and Payment of Tax Increment by the City. In consideration of the services to be provided by the CRRMA, which includes the development of transportation projects that will benefit the City and its residents, the City covenants and agrees that it will, as authorized under the Act and other applicable laws, continuously collect the Tax Increment during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City further covenants and agrees that it will make all payments as set forth in Section IV.A above, by a direct deposit into the Payment Fund, without counterclaim or offset.

I. Condition Precedent. Notwithstanding anything to the contrary herein, all obligations of the City hereunder with respect to the CRRMA Obligations issued to fund a project are contingent and conditioned upon the execution and delivery of the Pass-through Agreement necessary for the development of that project.

V.
PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by State law, no director or officer of the CRRMA, nor any employee or agent of the CRRMA, and no employee of the City, nor any councilmember, officer or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement, or the operations of the CRRMA or the City under the terms of this Agreement.

VI.
LAW TO BE OBSERVED

The City and the CRRMA at all times shall observe and comply with all applicable Federal and state laws, local laws, ordinances, orders, and regulations of the Federal, state, county or city governments.

VII.
INFORMATION & REPORTS

The CRRMA shall, at such times and in such form as the City may request, furnish periodic information concerning the status of the CRRMA and the performance of its obligations under this Agreement, and such other statements, certificates and approvals relative to the CRRMA as may be reasonably requested in writing by the City. The CRRMA shall also, at a minimum, make two (2) reports per year to the City Council. The first shall occur no later than May 1 of each year during the term of this Agreement and may coincide with any reports being provided relative to the CRRMA's Annual Report. The second report shall occur no later than six (6) months after the completion of the first report. Said reports shall include information on the current status of the Projects, the current financial status of the Payment Fund(s) and the state of the CRRMA as a public entity in general. The City covenants and agrees that it shall provide

the CRRMA with such information as may be necessary for the CRRMA to satisfy its continuing disclosure obligations and any other obligations as set forth in the documents authorizing issuance of the CRRMA Obligations. The CRRMA is solely responsible for any and all reporting requirements necessitated by Federal or state funding of the CRRMA Obligations, including any reporting requirements under the American Recovery and Reinvestment Act of 2009; provided however, the CRRMA may contract with a third party such as the Paying Agent to fulfill any such reporting requirements..

VIII.
COORDINATION WITH CITY OFFICIALS

The CRRMA will coordinate its activities pursuant to this Agreement with the City Manager or the City Manager's designee.

IX.
ADDRESS AND NOTICE

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or hand delivered, to the CRRMA at the following address or such other address as may be provided by the CRRMA:

Camino Real Regional Mobility Authority
2 Civic Center Plaza, 9th Floor
El Paso, TX 79901
Attention: Executive Director

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or hand delivered, to the City at the following addresses or such other address as may be provided by the City:

City of El Paso
2 Civic Center Plaza
El Paso, TX 79901
Attention: City Manager

X.
APPLICABLE LAWS

This Agreement is made subject to the constitution and laws of the State of Texas. Venue shall be in the County of El Paso.

XI.
CAPTIONS

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, or part of this Agreement.

XII.
SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party, except that the CRRMA may assign its rights hereunder to a Paying Agent under an Debt Governance Document to secure CRRMA Obligations.

XIII.
TERM AND TERMINATION; ZONE BOUNDARIES & DISSOLUTION

A. Effective Date: This Agreement shall become effective, and its initial term shall begin, on the date of execution by both parties.

B. Termination.

1. This Agreement shall terminate automatically at such time as all CRRMA Obligations issued pursuant to this Agreement have been fully paid.

2. Prior to the issuance of any CRRMA Obligations, a party may terminate its performance under this Agreement without cause only upon agreement in writing signed by both parties. Subsequent to the issuance of any CRRMA Obligations, the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation), in accordance with the terms of any applicable Debt Governance Document, shall also be required for any such termination.

3. In the event the Project approvals and agreements referenced within Section III.B above are revoked by Federal or state agencies for any particular Project and the CRRMA is no longer permitted to pursue the development of said Project, the City shall be entitled to terminate the obligations arising under this Agreement only for such Project.

4. In the event the approvals and agreements referenced within Section III.B above are revoked for all Projects, the City shall be entitled to terminate, by written notice to the CRRMA, the authority of the CRRMA to issue additional CRRMA Obligations under this Agreement.

5. In the event the Projects are not substantially completed and open to the traveling public within five years from March 1, 2010, the City shall be entitled to terminate, by written notice to the CRRMA, the authority of the CRRMA to issue additional CRRMA

Obligations under this Agreement to fund any Project the development of which has not commenced.

6. In addition, the CRRMA may, by written notice to the City, terminate its performance under this Agreement upon default by the City or an Event of Nonappropriation, and the City may, by written notice to the CRRMA, terminate the authority of the CRRMA to issue additional CRRMA Obligations under this Agreement upon default by the CRRMA or an Event of Nonappropriation. Default by a party shall occur if the party fails to perform or observe, in any material respect, any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to take the action described above as of the sixtieth (60th) day following the receipt by the defaulting party of a notice describing such default and intended action if such default is then continuing; provided, however, that such action may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default following such sixtieth (60th) day.

7. Notwithstanding anything in this Article XIII to the contrary but subject to Article XV, no termination of this Agreement will affect the obligations of the City to make the TRZ Contract Payments in accordance with the terms of this Agreement (subject to Article XV) and to transfer the Tax Increment to the CRRMA as long as any CRRMA Obligations remain outstanding.

C. Zone Boundaries. As long as the City's obligation hereunder to make the TRZ Contract Payments has not been amended or altered without the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) in accordance with the terms of this Agreement and the City continues to Appropriate funds for such payments, the City may amend, supplement, reconstitute or alter the Zone to (i) remove or add property and otherwise change boundaries as long as the Projects are still within the Zone (ii) make such changes which are necessary to assure that the Tax Increment may be legally collected and transferred and (iii) make such other changes to the Zone to ensure that the Zone is in compliance with applicable law.

D. Dissolution of Zone. Prior to the issuance of any CRRMA Obligations, the City agrees not to dissolve or terminate the Zone unless it makes arrangements, which the CRRMA has approved in writing, to provide for the payment in full of the CRRMA Obligations which the CRRMA is authorized to issue pursuant to Article III hereof. Subsequent to the issuance of any CRRMA Obligations, the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) shall also be required (in accordance with the terms of any applicable Debt Governance Document) for any such dissolution. Should State law repeal the Act which authorized the creation of the Zone and require termination of the Zone, the City shall be authorized to terminate the Zone and terminate this Agreement in its entirety with no further obligation of the City to the CRRMA; provided, however, that the termination of the Zone shall not relieve the City of its obligations to make arrangements, which the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) has approved in accordance to the terms of any applicable Debt Governance Document, to provide for the payment in full of the CRRMA Obligations which the CRRMA has issued or incurred pursuant to Article III hereof prior to such termination.

XIV.
AMENDMENT OR MODIFICATIONS

Prior to the issuance of any CRRMA Obligations, any changes, amendments or modifications to this Agreement shall occur only by mutual, written consent of the parties. Subsequent to the issuance of any CRRMA Obligations, the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) shall also be required (in accordance with the terms of any applicable Debt Governance Document) for any such amendment or modification. The foregoing notwithstanding and subsequent to the issuance of any CRRMA obligation, no amendment shall become effective until the parties have received an opinion of nationally-recognized bond counsel selected by the CRRMA and approved by the City to the effect that such amendment will not adversely impair the rights of the owners of any outstanding bonds, notes or other obligations issued by the CRRMA. Said review by bond counsel to occur within 30 days from the date a written amendment is proposed by either party.

XV.
APPROPRIATION

A. Subject to Appropriation. Notwithstanding anything herein to the contrary, the City's obligation to make TRZ Contract Payments is subject to the sufficiency of Available Funds and the CRRMA acknowledges that the City has no legal obligation to Appropriate funds to make TRZ Contract Payments.

B. Notice. The City shall provide the CRRMA and the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) with written notice within 72 hours of (i) the presentation of any proposed budget to the City Council which does not include sufficient funds to pay the TRZ Contract Payments or any other amounts due hereunder; or (ii) the occurrence of action by the City Council which constitutes an Event of Nonappropriation or a failure to Appropriate funds sufficient to pay TRZ Contract Payments due during the current or succeeding Fiscal Year.

C. Termination Upon Event of Nonappropriation. Upon an Event of Nonappropriation, the City may terminate its obligation to make the TRZ Contract Payments by giving notice to the CRRMA and, if CRRMA Obligations have been issued, to the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) and such termination will not be a default by the City under this Agreement. Notwithstanding anything herein to the contrary, no termination of this Agreement or any obligation to make TRZ Contract Payments because of an Event of Nonappropriation will affect the obligations of the City to transfer the Tax Increment to the CRRMA in accordance with the terms of this Agreement as long as any CRRMA Obligations remain outstanding.

XVI.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

CITY CLERK DEPT.

10 JUN 23 AM 8:15

EXECUTED this 29th day of June, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Charles McNabb
City Attorney

APPROVED AS TO CONTENT:

William F. Studer
Deputy City Manager
Finance and Public Safety

CAMINO REAL REGIONAL MOBILITY AUTHORITY

Raymond L. Telles
Executive Director

90055668.4/11001791

EXHIBIT B

(See attachment.)

STATE OF TEXAS §

COUNTY OF EL PASO §

FIRST AMENDMENT TO AGREEMENT WITH RESPECT TO TRANSPORTATION REINVESTMENT ZONE NUMBER TWO

THIS FIRST AMENDMENT is made by and between the City of El Paso, Texas, a municipal corporation organized under the laws of the State of Texas (the "City"), and the Camino Real Regional Mobility Authority, a regional mobility authority organized and existing under Chapter 370 of the Texas Transportation Code, as amended (the "CRRMA").

WITNESSETH:

WHEREAS, the City has previously established a Transportation Reinvestment Zone Number Two, City of El Paso, Texas (the "Zone") to promote transportation projects described by Section 222.104 of the Texas Transportation Code ("Section 222.104") that cultivate development and redevelopment of the Zone; and

WHEREAS, on June 29, 2010, the CRRMA and the City entered into an "Agreement With Respect to Transportation Reinvestment Zone Number Two" for the development and construction of one or more transportation projects within the Zone and the transfer and pledge of certain revenues for the payment of such projects (the "Original Agreement"); and

WHEREAS, the City and the CRRMA have entered into one or more agreements (the "Pass-through Agreement") with the Texas Department of Transportation (the "Department") under Section 222.104 for the design, development, financing, construction, maintenance, or operation of certain projects located within the Zone; and

WHEREAS, as a result of a change in law and in anticipated funding sources for the work covered by the Pass-Through Agreement, the Department, the CRRMA and the City have mutually determined that the termination of the Pass-Through Agreement is in the best interest of each of the contracting parties and such termination necessitates certain technical amendments to the Original Agreement; and

WHEREAS, a CRRMA Obligation (as defined in the Original Agreement) in the form of a State Infrastructure Bank Promissory Note dated December 9, 2010 (the "SIB Note") has been issued and therefore the consent of the paying agent for, and the holder/obligee of, the SIB Note is required to amend the Original Agreement;

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

1. The definition of "Projects" contained in Section I of the Original Agreement is hereby amended in its entirety to read as follows:

"Projects" shall refer to two (2) projects identified within the 2008 Comprehensive Mobility Plan as recipients of Zone funds; namely, Loop 375 at FM 659 (Zaragoza) and Loop 375 at I-10/Americas Interchange.

2. Section III. B of the Original Agreement is hereby amended by deleting the phrase "*the necessary Pass-through Agreement*" from such section.

3. Section IV. A of the Original Agreement is hereby amended by deleting the phrase "*contingent solely upon execution and delivery of a Pass-through Agreement for the development of one or more of the Projects*" from the second sentence of such section.

4. Section IV. I of the Original Agreement is hereby deleted in its entirety.

5. This First Amendment may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

6. This First Amendment shall be effective upon the last to occur of the following: (i) execution of this First Agreement by all the parties hereto; (ii) receipt of consent of the Paying Agent for the SIB Note to this First Amendment (and as required by such Paying Agent, the consent of the holder/obligee of the SIB Note); and (iii) receipt of an opinion of bond counsel to the CRRMA that this First Amendment will not adversely impair the rights of the owners of any outstanding bonds, notes or other obligations issued by the CRRMA.

[Remainder of Page Intentionally Left Blank]

EXECUTED this ____ day of _____, 2012.

CITY OF EL PASO

_____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
William F. Studer
Deputy City Manager
Finance and Management Support Services

CAMINO REAL REGIONAL MOBILITY AUTHORITY

_____
Raymond L. Telles
Executive Director

EXHIBIT C

(See attachment.)

AMENDMENT NO. 4 TO

PROJECT DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 4 TO THE PROJECT DEVELOPMENT AGREEMENT (this "Amendment") effective as of the ___ day of _____, 2012 (the "Effective Date"), is made by and between the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, the Camino Real Regional Mobility Authority ("Authority"), a political subdivision of the State of Texas; and is joined by the City of El Paso (the "City"), a municipal corporation organized under the laws of the State of Texas, for the purposes set forth below.

WHEREAS, TxDOT and the Authority entered into a Project Development Agreement, effective as of November 19, 2009 for the purpose of clarifying the relationship between TxDOT and the Authority in connection with the development, design, and construction of the interchange at IH 10 and Loop 375 in El Paso County (the "Project"); and

WHEREAS, the original Project Development Agreement was amended by Amendment No. 1 effective March 8, 2010; by Amendment No. 2 effective July, 2010; and by Amendment No. 3, effective December 12, 2011 (the Project Development Agreement, as amended, is hereinafter referred to as the "PDA"); and

WHEREAS, the initial plan for development of the Project included funding pursuant to a Pass-Through Finance Agreement executed by TxDOT, the City, and the Authority under §222.104 of the Texas Transportation Code and effective as of July 23, 2010 (the "Pass-Through Finance Agreement"); and

WHEREAS, subsequent changes to the anticipated sources of funding for the Project resulted in the parties agreeing to terminate the Pass-Through Finance Agreement; and

WHEREAS, TxDOT, the City, and the Authority executed a Termination Agreement effective _____, 2012, in which the parties agreed that the Pass-Through Finance Agreement was terminated immediately and would be of no further force or effect; and

WHEREAS, funding for the Project is being provided, in part, through Transportation Reinvestment Zone No. Two, City of El Paso, Texas, which was initially formed and implemented in connection with the Pass-Through Finance Agreement; and

WHEREAS, HB 563, enacted by the 82nd Texas Legislature, implemented statutory changes which allowed for a transportation reinvestment zone ("TRZ") to be established for a transportation project independent of the existence of any pass-through financing and a related pass-through finance agreement under Transportation Code §222.104; and

WHEREAS, HB 563 further provided that if all or part of a transportation project being supported by a TRZ (but without any pass-through financing) is subject to oversight by TxDOT because all or a portion is located on the state highway system, TxDOT, at the option of the governing body of the municipality (or county) forming the TRZ, shall delegate full

responsibility for the development, design, letting of bids, and construction of the project, including project inspection, to the municipality (or county), provided that the parties enter into an agreement which prescribes the development process, the roles and responsibilities of the parties, and the timelines for any required reviews and approvals; and

WHEREAS, such an agreement was not previously necessary between TxDOT, the City, and the Authority because of the existence of the Pass-Through Finance Agreement which addressed the relative roles and responsibilities of the parties; and

WHEREAS, the termination of the Pass-Through Finance Agreement means that a new agreement must be entered into pursuant to HB 563; and

WHEREAS, the PDA already prescribes relative roles and responsibilities by and between TxDOT and the Authority; and

WHEREAS, the requirements of HB 563 can be satisfied by the amendment of the PDA to allow the City to assume and acknowledge responsibility for development of the Project; for all parties to acknowledge that the Authority will act on behalf of the City and will assume and perform the requirements under the PDA; and to affirm TxDOT's oversight as required by HB 563; and

WHEREAS, pursuant to Paragraph 36 of the PDA, modifications to the PDA must be made in writing; and

WHEREAS, capitalized terms not defined herein shall have the meanings given to them in the PDA.

NOW THEREFORE in consideration of the covenants herein contained, the Parties agree as follows:

1. Addition of Paragraph 48. The parties hereby agree to amend the PDA by adding a new paragraph 48 as follows:

> **48. City Responsibilities; Authority Performance**. Pursuant to changes in law related to transportation reinvestment zones ("TRZ") coupled with the termination of a Pass-Through Finance Agreement, the City, having formed a TRZ to support the Project, may be delegated full responsibility for development of the Project pursuant to an agreement with TxDOT. The City has requested that delegation and agrees to assume that responsibility, provided that TxDOT, the City and the Authority all acknowledge and agree that the Authority will assume and perform the City's development responsibilities pursuant to the terms of this Agreement. The City, in accordance with the "Agreement With Respect To Transportation Reinvestment Zone Number Two" by and between the City and the Authority and dated June 29, 2010, will continue to be responsible for certain contractual obligations incurred by the Authority in its financing of the I-10/Loop 375 Interchange Improvement Project as further described therein. The parties further acknowledge and agree that the Agreement provides for review and approval by the

Department of the development, design and construction plans for the Project, and further prescribes: (i) the development process (including the Design/Build CDA process previously conducted by the Authority); (ii) the roles and responsibilities of the Parties; and (iii) timelines for any required reviews or approvals. The City, and the Authority acting on behalf of the City, further agree that they will cause any portion of the Project located on the state highway system or in state highway system right-of-way to comply with state and federal criteria for project development, design and construction, unless TxDOT has granted an exception. TxDOT acknowledges that compliance by the Authority with the terms of this Agreement will satisfy the City's obligations related to development of the Project.

2. Ratification. Except as expressly amended by this Amendment, the PDA and the Exhibits thereto shall remain in full force and effect. None of the rights, interests and obligations existing and to exist under the PDA are hereby released, diminished or impaired, and the parties hereby reaffirm all covenants, representations and warranties, obligations and agreements in the PDA. To the extent any provisions of the PDA are deleted by virtue of this Amendment, such provisions shall nevertheless survive for purposes of enforcing rights or obligations as provided in this Amendment.

3. Execution in Counterparts. For the convenience of the parties, this Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. Governing Law. This Amendment shall be governed and construed in accordance with the terms of the PDA.

The undersigned signatories for TxDOT, the Authority and the City hereby represent and warrant that each has full and complete authority to enter into this Amendment to the PDA on behalf of the party represented, that such Amendment has received the approval necessary from the organization he or she represents, and to bind such party in accordance with the terms and conditions of the PDA as amended hereby. The undersigned signatories further agree that the City is signing only to affirm its agreement to Paragraph 48 and the assumption of the obligations reflected therein, as well as the Authority's agreement to perform those obligations on the City's behalf.

IN WITNESS HEREOF, the parties have executed this Amendment effective as of the date set forth above.

TEXAS DEPARTMENT OF TRANSPORTATION

By:_____
Name: Phil Wilson
Title: Executive Director
Date:_____

CAMINO REAL REGIONAL MOBILITY AUTHORITY

By:_____
Name: Raymond L. Telles
Title: Executive Director
Date:_____

CITY OF EL PASO, TEXAS solely for purposes of the commitments reflected in Paragraph 48.

_____
Name: Joyce Wilson
Title: City Manager
Date:_____

APPROVED AS TO FORM:

Name: _____
Title: ~~Assistant~~ City Attorney

APPROVED AS TO CONTENT:

Name: William F. Studer
Title: Deputy City Manager, Finance and Management Support Services

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