

# **CAMINO REAL REGIONAL MOBILITY AUTHORITY BOARD RESOLUTION**

**WHEREAS**, the Camino Real Regional Mobility Authority (CRRMA) and the Texas Department of Transportation (TxDOT) seek to jointly develop and operate the Loop 375 Border Highway West Extension Project (the “BHW Project”) from Racetrack Drive near Doniphan Road and New Mexico 273 (west of downtown) to US 54 (east of downtown), with the CRRMA as the operator of the tolled component of the BHW Project; and

**WHEREAS**, the parties had previously agreed to the general terms and conditions of such joint development and operation through the agreement on a Term Sheet, which identified the general roles and responsibilities of each party for the development of the BHW Project; and

**WHEREAS**, the CRRMA Board approved the referenced Term Sheet and authorized its Executive Director to execute the resulting Memorandum of Understanding (MOU) with TxDOT, but the parties have since sought to amend certain terms originally outlined in the Term Sheet and memorialized in the MOU; and

**WHEREAS**, the CRRMA and TxDOT desire now to amend the MOU through a Supplement to the MOU, which would more accurately enumerate the rights and responsibilities of the parties for the joint development and operation of the BHW Project;

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

**THAT** the CRRMA’s Executive Director is authorized to execute a First Supplement to Memorandum of Understanding and related instruments necessary with TxDOT to further pursue the joint development and operation of the Loop 375 Border Highway West Extension Project.

**PASSED AND APPROVED THIS 13<sup>TH</sup> DAY OF AUGUST, 2014.**

**CAMINO REAL REGIONAL  
MOBILITY AUTHORITY**

**ATTEST:**

\_\_\_\_\_  
Scott McLaughlin, Chair

\_\_\_\_\_  
Susan A. Melendez, Board Secretary

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Raymond L. Telles  
Executive Director

## **FIRST SUPPLEMENT TO MEMORANDUM OF UNDERSTANDING**

**THIS FIRST SUPPLEMENT TO MEMORANDUM OF UNDERSTANDING** (“**First Supplemental MOU**”), is entered into 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 “**CRRMA**,” to be effective as of the \_\_\_\_ day of August, 2014.

### **RECITALS**

TxDOT and CRRMA are parties to a certain Memorandum of Understanding dated February 26, 2014 (the “**MOU**”) concerning the development, delivery, operation and maintenance of the proposed Loop 375 Border Highway West Extension project, as further described in the **MOU**.

TxDOT and CRRMA desire to supplement, amend and clarify the **MOU** as set forth herein.

**NOW, THEREFORE**, TxDOT and CRRMA agree to and do hereby supplement, amend and clarify the **MOU** as follows:

#### **1. Definitions**

All capitalized terms used in this First Supplemental **MOU** and not defined herein have the respective meanings set forth in the **MOU**.

#### **2. Responsibility for Project Development and Delivery**

- a. In administering Project design and construction, TxDOT shall not make any decisions, exercise any rights, or implement or approve any changes that will (i) increase the Project Capital Costs (including without limitation obligations under the Development Agreement) by more than \$500,000 per occurrence or \$5 million in the aggregate (giving effect to all previously authorized changes); and/or (ii) have an adverse impact on operating and maintenance costs (including without limitation costs to be paid pursuant to the Maintenance Agreement) in amount exceeding \$200,000 per occurrence (or \$2 million in the aggregate) without providing written notice to CRRMA and conferring with representatives of CRRMA regarding the need for the action which is the subject of the notice.
- b. In administering design, construction, purchase, installation and integration of the Tolling Improvements, CRRMA shall not make any decisions, exercise any rights, or implement or approve any changes that will (i) increase the Project Capital Costs (including without limitation obligations under the contract with the toll system integrator) by more than \$100,000 per occurrence or \$1 million in the aggregate

- (giving effect to all previously authorized changes); and/or (ii) have an adverse impact on operating and maintenance costs (including without limitation costs to be paid pursuant to the Maintenance Agreement or Tolling Services Agreement) in amount exceeding \$100,000 per occurrence (or \$1 million in the aggregate) without providing written notice to TxDOT and conferring with representatives of TxDOT regarding the need for the action which is the subject of the notice.
- c. While CRRMA will be a dual obligee on the payment, performance and warranty bonds or other security to be provided by the Developer under the Development Agreement or by the contractor under the Maintenance Agreement, TxDOT, as responsible party for Project design, construction and maintenance, shall exclusively make all decisions respecting claims against and enforcement of the bonds or other security, and any settlements with a surety or other provider of security, taking into consideration CRRMA's input and recommendations.
  - d. The CRRMA and TxDOT will be dual obligees on all security documents, including payment and performance bonds, that CRRMA may require in its contract with the toll system integrator for the Tolling Improvements or with the back office provider under the Tolling Services Agreement, consistent with each party's Project Interest. While TxDOT will be a dual obligee, CRRMA, as responsible party for Tolling Improvements design and construction and back office services, shall exclusively make all decisions respecting claims against and enforcement of the bonds or other security, and any settlements with a surety or other provider of security, taking into consideration TxDOT's input and recommendations.

### **3. Responsibility for Project Operations and Maintenance – Contracting for Tolling Services**

- a. TxDOT shall have the right to participate in the negotiation of each agreement, or the extension or renewal of an agreement, for back office services with the provider selected for the Project from time to time (if other than TxDOT) pursuant to the MOU (each a "Tolling Services Agreement"). Such right is in addition to, and does not limit, TxDOT's rights under Section 3.a of the MOU.
- b. TxDOT and CRRMA confirm their intent that the Tolling Services Agreement be entered into by CRRMA with the provider that offers the most advantageous terms for the Project regarding (i) pricing, (ii) performance standards, (iii) timing of payment of toll revenues, (iv) security arrangements for protection of toll revenues, and (v) fee payment procedures consistent with Section 8.a of the MOU as supplemented by Section 6 below (collectively the "Essential TSA Terms"). TxDOT and CRRMA confirm that, while all the Essential TSA Terms are important to them, advantageous pricing shall receive more weighting than any one of the other Essential TSA Terms. TxDOT and CRRMA also confirm the importance of establishing custodial arrangements, or other means and types of security, that will adequately protect toll revenues from risk of loss due to breach, misapplication, misappropriation or bankruptcy of the back office service provider or its vendor. The parties agree and acknowledge there is a [strong presumption in favor of custodial arrangements; and if](#)

CRRMA proposes any means and type of security as an alternative to custodial arrangements, then (A) it must demonstrate to TxDOT's satisfaction that such alternative will fully protect against all risk of loss of toll revenues due to breach, misapplication, misappropriation or bankruptcy of the back office service provider or its vendor, and (B) TxDOT shall in no event be required to provide or contribute to the alternative security. The Essential TSA Terms, including the terms of any ancillary agreements (such as custodial agreements or other security instruments) concerning the Essential Terms, shall be subject to the prior mutual written approval of TxDOT and CRRMA, not to be unreasonably withheld or delayed.

- c. CRRMA represents and warrants that the CTRMA holds no preferential rights to provide back office services for the Project under the Interlocal Agreement between them dated August 28, 2013. CRRMA shall solely bear all risks of liability arising out of any claim or cause of action based on any preferential rights of CTRMA under such Interlocal Agreement. TxDOT shall not be bound to approve the Essential TSA Terms of a Tolling Services Agreement with CTRMA by reason of any such preferential rights. Any Tolling Services Agreement entered into between CRRMA and CTRMA for the Project shall be separate and distinct from such Interlocal Agreement, and free from cross-default, cross-liability and offset provisions.
- d. The scope of services under the Tolling Services Agreement shall include all back office and customer services necessary for Toll Operations, including transponder and pay-by-mail toll transaction processing, interoperable toll transaction processing, toll collection, violation processing, collection management, customer service, habitual violator administration, court processing and related services; provided that CRRMA may obtain transponder issuance, servicing and replacements through a different toll operator in the state.

#### **4. Responsibility for Project Operations and Maintenance – Toll Rates**

Pursuant to Section 3.b of the MOU and Commission Minute Order 113909 dated April 24, 2014, the Commission has established toll rates and a toll rate escalation policy for the Project as set forth in Attachment A to this First Supplemental MOU. CRRMA acknowledges and shall carry out such toll rates and toll rate escalation policy, as the same may be revised or replaced by the Commission from time to time.

#### **5. Responsibility for Project Operations and Maintenance – Maintenance Agreement**

CRRMA agrees and acknowledges that the form of Maintenance Agreement that TxDOT most recently delivered to CRRMA:

- a. Has a maximum duration of five years, with options to extend in favor of TxDOT for two additional five-year terms; and
- b. Satisfies the requirement in the last sentence of Section 3.c of the MOU.

#### **6. Payment of Project Operations and Maintenance Expenses**

- a. Exhibit D of the MOU, setting forth the categories of operations and maintenance expenses eligible for reimbursement from the BHW Operations and Maintenance Fund, is revised to add the following under “Operating Expenditures,” subject to Section 8.b of the MOU and subsection b. below:
- i. Third party service costs specifically related to the Project, including
    - Paying Agent fees and expenses;
    - Administrative Agent fees and expenses;
    - General engineering consultant fees and expenses directly related to the Project;
    - Legal and financial advisory fees and expenses directly related to the Project; and
  - ii. Administrative costs and expenses directly related, or reasonably allocable, to the Project.
- b. Notwithstanding the foregoing, the following costs and expenses are not recognized as Project operation and maintenance expenses and are not eligible for reimbursement from the BHW Operations and Maintenance Fund:
- i. General oversight costs and expenses incurred by TxDOT, CRRMA or either of its consultants not directly related to the Project;
  - ii. Costs and expenses of work and services by legal and financial advisors to TxDOT or CRRMA that are (A) not directly related to the Project. (B) incurred by TxDOT or CRRMA due to its negligence or breach of contract or (C) incurred in connection with negotiations, disputes, claims, litigation or settlements between TxDOT and CRRMA, even if related to the Project;
  - iii. Administrative costs and expenses of TxDOT or CRRMA that are not directly related, or reasonably allocable, to the Project; and
  - iv. Costs and expenses that are reasonably allocable to other facilities of TxDOT or CRRMA, including any such costs and expenses incurred under a contract having a scope that includes services for the Project and for other facilities of TxDOT or CRRMA, provided that nothing herein shall preclude the payment of costs and expenses under such contracts that are reasonably allocable to the Project.
- c. TxDOT and CRRMA acknowledge and agree that in order to comply with the first-in, first-out prioritization for payment of operating and maintenance expenses set forth in Section 8.a of the MOU, CRRMA shall require that the Tolling Services Agreement, including any such agreement with TxDOT, set forth:
- i. An obligation of the back office provider to remit, or cause its custodian to remit, on each business day or other mutually approved frequency, to the Paying Agent for deposit into the “Border Highway West Operations and Maintenance Fund” gross Project toll revenues collected without prior deduction of the provider’s fees and charges; and

- ii. The back office provider's agreement to be paid its fees and charges from the Paying Agent based on an invoicing procedure to be determined under the Tolling Services Agreement, the frequency of which may be the same as the frequency of remittances to the Paying Agent.
- d. In Section 8.a of the MOU, "first-in, first-out basis" shall be determined by each date the Paying Agent treats as received operations and maintenance expense invoices and related certifications or other payment documentation; and invoices and documentation treated by the Paying Agent as received on the same date, regardless of time of day, shall have equal priority.
- e. The time period set forth in Section 8.c of the MOU within which a party may dispute an invoice or other payment documentation is changed from three business days to five business days of receipt of the invoice or other payment documentation.

## **7. Sources of Funding – Capital Costs**

- a. The estimated total Capital Costs for the Project set forth in Sections 4.a and 4.c of the MOU is changed from \$800 million to \$615 million. The CRRMA contribution to the Capital Costs set forth in Sections 4.a, 4.b and 6.a of the MOU (i.e. the BHW Project Capital Grant) is changed from \$600 million to \$500 million. The estimated balance of the Capital Costs set forth in Section 4.c is changed from \$200M to \$115M. Exhibits A and B of the MOU are replaced with Exhibits A and B attached to this First Supplemental MOU.
- b. Capital Costs shall be paid first from the BHW Project Fund (including investment earnings) until exhausted, and then by TxDOT.
- c. The BHW Project Capital Grant and investment earnings shall be available to pay all the categories of Capital Costs set forth in Exhibit A to the MOU; and Section 4.b of the MOU shall be construed accordingly.
- d. The amount for each line item in Exhibit A to the MOU is not a limit on the amount of funds in the BHW Project Fund that may be applied toward that particular line item.

## **8. Sources of Funds – Operating and Maintenance Expenses**

If any amounts remain in the BHW Project Fund after substantial completion under the Development Agreement and CRRMA and TxDOT agree to apply all or any portion thereof toward costs under the Maintenance Agreement, as provided in Section 6.c of the MOU, then CRRMA and TxDOT:

- a. Shall jointly instruct the Administrative Agent to transfer the agreed amount to the Paying Agent;

- b. Shall jointly instruct the Paying Agent to establish a separate subaccount under the Border Highway West Operations and Maintenance Fund and to deposit and hold such transferred funds in such subaccount; and
- c. Shall thereafter instruct the withdrawal or use of funds in such subaccount only to pay or reimburse capital maintenance costs of the Project.

**9. Determination of Project Interests**

The amended Exhibit A to the MOU to be prepared in accordance with Section 7.a of the MOU shall show the actual Capital Costs, by category and in total, paid by each party respectively. When the definitive amended Exhibit A is prepared and attached to the MOU, it shall be deemed to replace in full current Exhibits A and B to the MOU.

**10. Integration**

This First Supplemental MOU supplements, amends and clarifies the MOU, all of the terms of which continue in full force and effect as supplemented, amended and clarified hereby. The MOU and this First Supplemental MOU shall be construed and interpreted as a whole.

**IN WITNESS WHEREOF**, TxDOT and the CRRMA have executed this First Supplemental MOU by four multiple counterparts on the dates as shown herein below, effective on the date listed above.

**CAMINO REAL REGIONAL  
MOBILITY AUTHORITY**

**TEXAS DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Raymond L. Telles  
Executive Director

By: \_\_\_\_\_  
LtGen J.F. Weber, USMC (Ret)  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A

Loop 375 (Border Highway West Extension) Toll Rates in 2014 Dollars											
Tolling Point	Period	Two-Axle		Three-Axle		Four-Axle		Five-Axle		Six-Axle	
		ETC	PBM	ETC	PBM	ETC	PBM	ETC	PBM	ETC	PBM
<b>Mainline Plaza North of Executive Center Blvd.</b>	AM Peak (Mon. – Fri.) (6:30am – 9:00am)	\$1.12	\$2.24	\$2.24	\$4.48	\$3.36	\$6.72	\$4.48	\$8.96	\$5.60	\$11.20
	PM Peak (Mon. – Fri.) (3:00pm – 6:30pm)	\$1.12	\$2.24	\$2.24	\$4.48	\$3.36	\$6.72	\$4.48	\$8.96	\$5.60	\$11.20
	Off-Peak (Mon. – Fri.) (9:00am – 3:00pm ) and (6:30pm – 6:30am)	\$0.56	\$1.12	\$1.12	\$2.24	\$1.68	\$3.36	\$2.24	\$4.48	\$2.80	\$5.60
	Weekends (6:30pm Fri. – 6:30am Mon.)	\$0.56	\$1.12	\$1.12	\$2.24	\$1.68	\$3.36	\$2.24	\$4.48	\$2.80	\$5.60
<b>Entrance and Exit Ramps at: Executive Center Blvd.</b>	AM Peak (Mon. – Fri.) (6:30am – 9:00am)	\$0.76	\$1.52	\$1.52	\$3.04	\$2.28	\$4.56	\$3.04	\$6.08	\$3.80	\$7.60
	PM Peak (Mon. – Fri.) (3:00pm – 6:30pm)	\$0.76	\$1.52	\$1.52	\$3.04	\$2.28	\$4.56	\$3.04	\$6.08	\$3.80	\$7.60
	Off-Peak (Mon. – Fri.) (9:00am – 3:00pm ) and (6:30pm – 6:30am)	\$0.50	\$1.00	\$1.00	\$2.00	\$1.50	\$3.00	\$2.00	\$4.00	\$2.50	\$5.00
	Weekends (6:30pm Fri. – 6:30am Mon.)	\$0.50	\$1.00	\$1.00	\$2.00	\$1.50	\$3.00	\$2.00	\$4.00	\$2.50	\$5.00
<b>Entrance and Exit Ramps at: Spur 1966</b>	AM Peak (Mon. – Fri.) (6:30am – 9:00am)	\$0.50	\$1.00	\$1.00	\$2.00	\$1.50	\$3.00	\$2.00	\$4.00	\$2.50	\$5.00
	PM Peak (Mon. – Fri.) (3:00pm – 6:30pm)	\$0.50	\$1.00	\$1.00	\$2.00	\$1.50	\$3.00	\$2.00	\$4.00	\$2.50	\$5.00
	Off-Peak (Mon. – Fri.) (9:00am – 3:00pm ) and (6:30pm – 6:30am)	\$0.50	\$1.00	\$1.00	\$2.00	\$1.50	\$3.00	\$2.00	\$4.00	\$2.50	\$5.00
	Weekends (6:30pm Fri. – 6:30am Mon.)	\$0.50	\$1.00	\$1.00	\$2.00	\$1.50	\$3.00	\$2.00	\$4.00	\$2.50	\$5.00

**Notes:**

1. Pay By Mail (PBM) rates do not include \$1.00 invoice processing charge.
2. A 100% surcharge (for PBM) over the ETC rate is applied.

## Toll Rate Escalation Policy

Subject in all instances to the provisions, requirements and restrictions of the indenture, if any, as amended and supplemented from time to time, beginning on September 1, 2019 and on each September 1 thereafter (the “Toll Escalation Determination Date”), a percentage increase in the toll rates charged on the Border Highway West (BHW) Extension Project will be determined in an amount equal to the Toll Rate Escalation Percentage. The Toll Rate Escalation Percentage, as calculated on each Toll Escalation Determination Date, shall be reported to the Texas Transportation Commission (commission) each year at its October meeting. The percentage increase in the toll rates shall be effective automatically on January 1 of the next calendar year and implemented by the executive director, unless the commission affirmatively votes prior to January 1 to modify the Toll Rate Escalation Percentage. If the commission votes to modify the Toll Rate Escalation Percentage, the toll rate increase to be effective on January 1 of the next calendar year shall be based on the modified Toll Rate Escalation Percentage.

Toll rates in effect during the first calendar year the Border Highway West Extension Project is opened to traffic will be rates that are escalated by applying the below formula as defined in the definitions to each year's rates between 2014 and the year the Border Highway West Extension Project is opened to traffic.

For purposes of determining the Toll Rate Escalation Percentage, the following capitalized terms shall have the meanings given below:

“Toll Rate Escalation Percentage” = shall mean a percentage amount equal to  $[(CPI^t - CPI^{t-12})/CPI^{t-12}]$ . In the event the Toll Rate Escalation Percentage is calculated to equal less than 2%, then the Toll Rate Escalation Percentage shall be deemed to equal 2%.

“CPI” = the most recently published non-revised index of Consumer Prices for All Urban Consumers (CPI-U) before seasonal adjustment (“CPI”), as published by the Bureau of Labor Statistics of the U.S. Department of Labor (“BLS”) prior to the Toll Escalation Determination Date for which such calculation is being made. The CPI is published monthly and the CPI for a particular month is generally released and published during the following month. The CPI is a measure of the average change in consumer prices over time for a fixed market basket of goods and services, including food, clothing, shelter, fuels, transportation, charges for doctors’ and dentists’ services, and drugs. In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The contents of the market basket of goods and services and the weights assigned to the various items are updated periodically by the BLS to take into account changes in consumer expenditure patterns. The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100.0. The base reference period for the CPI is the 1982 – 1984 average.

“CPI<sup>t-12</sup>” = the CPI published by the BLS in the month that is 12 months prior to the month used to established CPI<sup>t</sup>.

If the CPI is discontinued or substantially altered, as determined in the sole discretion of the department, the department will determine an appropriate substitute index or, if no such substitute index is able to be determined, the commission reserves the right to modify its obligations under this policy.

Exhibit A  
Capital Costs

Loop 375 Border Highway West Extension Project

Item				Estimated Cost (in millions)
Design				\$
Construction				\$
Right of Way				\$
Utilities				\$
Other Direct Design-Build				\$
Agreement Costs <sup>3</sup>				36
Toll Improvements				\$
Change Orders				\$ 8
Total				\$

<sup>1</sup>CRRMA contribution of its \$500m grant from the Texas Mobility Fund General Obligation Bonds represents its current project interest

<sup>2</sup>TxDOT's contribution to the Capital Costs is included above and identified in Exhibit B

<sup>3</sup>Other costs include design-build quality control & assurance, permitting, surveying, geotechnical analysis, material testing, environmental mitigation, and other such costs for services directly required by the agreement.

Exhibit B  
TxDOT's Capital Costs

Loop 375 Border Highway West Extension Project

Item	Estimated Cost (in millions)
Design	\$
Construction	\$
Right of Way	\$
Utilities	\$
Other Direct Design Build Agreement Costs	\$
Toll Improvements	\$
Change Orders	\$
Total	\$ 115 <sup>1</sup>

<sup>1</sup>TxDOT's contribution is estimated to be \$115m and represents its current Project Interest