

CAMINO REAL REGIONAL MOBILITY AUTHORITY BOARD RESOLUTION

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is the local toll project entity for the El Paso region and is currently engaged in the development of various aspects of toll projects located on the Loop 375 Corridor, including the preliminary engineering and environmental phase of the Americas Managed Lanes Project and the design and installation of toll equipment for the operation of the César Chávez Managed Lanes Project; and

WHEREAS, the CRRMA received a request from the Texas Department of Transportation (TxDOT) that the CRRMA waive its right to develop, construct, finance, operate and maintain 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), which includes a tolled lane alternative in order for TxDOT to be permitted to pursue the BHW Project; and

WHEREAS, in support of the goal of the BHW Project to provide an alternative route to Interstate 10, the CRRMA waived and declined its right to develop, finance, construct and operate the BHW Project, thereby permitting TxDOT to pursue the same, noting that the CRRMA remained interested in discussing with TxDOT an agreement whereby the CRRMA could operate and maintain any tolled lanes of the BHW Project in order that the traveling public would eventually interface only with a single tolling entity while utilizing the toll road system currently being constructed in the El Paso region; and

WHEREAS, TxDOT has expressed an interest in jointly developing the BHW Project with the CRRMA, including the use of the CRRMA as the operator of the tolled component of the BHW Project and the CRRMA and TxDOT desire now to formalize such discussions through the approval of a Term Sheet and subsequent memorandum of understanding or other instruments, which would more fully enumerate the rights and responsibilities of the parties.

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

THAT the Camino Real Regional Mobility Authority (CRRMA) hereby approves of the Term Sheet with the Texas Department of Transportation (TxDOT), in substantially the same form as attached hereto as **ATTACHMENT "A"**, with regard to the shared development of the Loop 375 Border Highway West Extension Project; and

THAT the CRRMA's Executive Director is authorized to initiate negotiations and execute a memorandum of understanding or such other instruments necessary with TxDOT to further pursue the arrangement more fully enumerated within the referenced Term Sheet; provided, however, that the Executive Director will provide copies of any instruments arising from the directives provided herein to the Board at the next regularly scheduled Board Meeting.

PASSED AND APPROVED THIS 11TH DAY OF DECEMBER, 2013.

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

Scott McLaughlin, Chair

ATTEST:

Susan A. Melendez, Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

ATTACHMENT “A”

LOOP 375 BORDER HIGHWAY WEST EXTENSION PROJECT

TERM SHEET WITH TxDOT

Loop 375 Border Highway Term Sheet

1. Responsibility for Project Development and Delivery.

- TxDOT will be primarily responsible for the procurement of a design-build developer for the Project and will have responsibility for Project design and construction; construction oversight and management; right-of-way acquisition; and obtaining and maintaining all governmental approvals related to delivery of the Project, in all cases, other than for the Tolling Improvements described below.
- The CRRMA will be responsible for the design, construction, purchase, installation and integration of facilities, improvements or equipment necessary to operate the toll aspects of the Project ("Tolling Improvements") and have input on the Project design, as it relates to the Tolling Improvements. The CRRMA shall select the toll system integrator for the Tolling Improvements. If the CRRMA conducts a procurement for a toll systems integrator, a TxDOT employee will participate in the selection of the preferred proposer by serving as a representative on the committee responsible for recommending the preferred proposer to the CRRMA board of directors; if the CRRMA uses its existing toll systems integrator, a TxDOT employee will be involved in developing the project specifications and pricing for toll systems integration equipment.
- A CRRMA employee or Board Member will participate in the selection of the preferred proposer by serving as a representative on the Project Evaluation, Selection and Recommendation Committee, subject to TxDOT's procurement protocol and confidentiality requirements.
- TxDOT will assign a percentage interest in the design-build development agreement and the related operating agreement to the CRRMA at the date the contract is executed, consistent with the estimated percentage of CRRMA's contribution to the Project capital costs (its "Project Interest").
- During the design and construction of the Project, the CRRMA shall receive copies of all Project progress reports delivered to TxDOT by TxDOT's engineering consultant for the Project. The CRRMA shall pay all invoices under the Project design-build agreement as they are approved by TxDOT.
- The CRRMA will assign a percentage interest in the agreements relating to the Tolling Improvements to TxDOT consistent with the estimated percentage of TxDOT's contribution to the Project capital costs (its "Project Interest"). If such agreements relate to more than one project, the assignment will relate to the portion of the agreement that pertains to the project.

2. Responsibility for Project Operation and Maintenance.

- The CRRMA will be responsible for toll collection, and toll operations, (collectively, "Toll Operations") for the tolled portions of the Project. The CRRMA may use TxDOT to provide back-office services related to Toll Operations. If someone other than TxDOT provides the back office services, a TxDOT employee will participate in the selection of the preferred proposer by serving as a representative on the committee responsible for recommending the preferred proposer to the CRRMA board of directors; if the CRRMA uses its existing toll operators, a TxDOT employee will be involved in developing the project specifications and pricing.
- The Texas Transportation Commission ("Commission") will set the toll rates, taking into account the CRRMA's recommended toll charges that optimize revenues so as to maximize the ability to pay the total costs of operation and maintenance of the Project; provided, that in the event toll revenues do not cover such total operations and maintenance costs of the Project, the Commission reserves the right to adjust such rates.
- TxDOT may, at its discretion, waive required toll collection on the Project during certain I-10

reconstruction activities or at other times throughout the term of the Project when operationally necessary, with limitations on such waivers being agreed upon in advance between the parties.

- TxDOT will be responsible for roadway operations and maintenance of the Project and may perform such responsibilities under an operating agreement with the design-build developer.

3. Sources of Funds – Capital Costs.

- TxDOT's estimate of the capital cost of the Project is \$800 million, of which \$600 million will constitute a grant to the CRRMA from the proceeds of Texas Mobility Fund General Obligation Bonds ("BHW Project Capital Grant"). The BHW Project Capital Grant will be deposited in a BHW Project Fund to be held in escrow with a state or national bank (an "Administrative Agent") and disbursed to pay agreed capital costs relating to the delivery of the Project ("Capital Costs") to the extent of CRRMA's Project Interest.
- The \$600 million grant and any investment earnings thereon will be used exclusively for payments to the developer under the design-build agreement, ROW acquisition costs and Capital Costs relating to the delivery and integration of the Tolling Improvements. The CRRMA shall receive credit toward its Project Interest for any investment earnings on the BHW Project Capital Grant.
- TxDOT will be responsible for the balance of the agreed Capital Costs in excess of the BHW Project Capital Grant, currently estimated at \$200 million, which may come from whatever source is available to TxDOT, subject to legislative appropriation.

4. Sources of Funds – Operating and Maintenance Expenses.

- After payment of the costs of Toll Operations, roadway operating and maintenance expenses and any reasonably required operational reserve as established by the parties, the net revenues of the Project (gross revenues minus costs of Toll Operations and roadway operation and maintenance costs), if any, shall be distributed to each of TxDOT and the CRRMA in accordance with their respective Project Interest.
- In the event toll revenues do not cover total operations and maintenance costs of the Project in a year, TxDOT may pay more than its' Project Interest share in that year with the CRRMA paying more than its' Project Interest share in subsequent years until each parties' share of cumulative expenses matches their Project Interest share.

5. Payment of Project Capital Costs.

- The BHW Project Fund Agreement between TxDOT, CRRMA and the Administrative Agent will set forth the procedures for payment of Project Capital Costs payable from the BHW Project Capital Grant.
- CRRMA will be entitled to instruct the Administrative Agent to disburse payment only for its share of those actual Capital Costs incurred and will cause disbursement payments to be made at not less than monthly intervals when properly billed.
- CRRMA will execute and submit the necessary documents required by TxDOT and its bond counsel to ensure that its use of the funds comply with federal tax requirements and the terms of the MOU and the BHW Project Fund Agreement.
- TxDOT, at its expense, may audit the BHW Project Fund at any time. Upon completion of the Project, any funds due to the CRRMA, TxDOT, or others shall be paid by the owing party within thirty days after written notification that funds are due.

- To the extent Project Capital Costs exceed the BHW Project Capital Grant amount, plus the amount earned on the investment of the BHW Project Capital Grant, TxDOT will be responsible for the additional amount of Capital Costs.

6. Determination of Project Interests.

- Until such time that actual contributions are verified, each party's percentage of Project Interest shall be determined from the amount of its reasonably estimated contribution of the Capital Costs of the entire Project.
- In the event that the design-build developer is unable to complete the Project, each party will bear the risk of loss commensurate with that party's Project Interest. All amounts payable under the Project payment and performance bonds and any other security shall be distributed to the parties in accordance with their Project Interests.
- The roadway constructed by the Project will at all times remain on the state highway system. The Project ROW will at all times remain in the name of the State of Texas. The CRRMA shall have a right of entry and access to, and use of, the Project ROW as necessary to fulfill its responsibilities.

7. Term.

- The MOU and associated agreements will terminate on August 31, 2040 or the last day on which the Project is operated as a toll facility, whichever date is later.

8. Documents to be Drafted.

- Memorandum of Understanding between TxDOT and the CRRMA
- BHW Project Fund Agreement between TxDOT, the CRRMA and the Administrative Agent