

**PROJECT DEVELOPMENT AGREEMENT FOR PRELIMINARY ENGINEERING
AND ENVIRONMENTAL SERVICES**

This Agreement is made by and between the Texas Department of Transportation, an agency of the State of Texas (“TxDOT”), and the Camino Real Regional Mobility Authority, a political subdivision (“CRRMA” or the “Authority”), for the purpose of facilitating certain project development activities in connection with the preparation of environmental documents and preliminary engineering services for the proposed Loop 375 - Americas Managed Lanes Project in the city of El Paso.

WITNESSETH

WHEREAS, the Authority is a regional mobility authority created pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and the petition and approval process established in 43 Texas Administrative Code § 26.1, et. seq. and authorized by Minute Order 110573 of the Texas Transportation Commission approved on June 29, 2006; and

WHEREAS, the RMA Act authorizes regional mobility authorities to study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects, individually or as one or more systems, provided that the projects are included in a plan approved by the applicable metropolitan planning organization and that the projects are consistent with the statewide transportation plan and the statewide transportation improvement program; and

WHEREAS, on or about May 23, 2012, the CRRMA submitted a request, pursuant to 43 Tex. Admin Code §27.50 *et seq.* (the “Toll Equity Rules”), for financial assistance to fund certain development costs of the Loop 375 - Americas Managed Lanes Project (“Project”); and

WHEREAS, on July 26, 2012, and August 30, 2012, the Texas Transportation Commission (“Commission”), pursuant to its constitutional and statutory authority and the Toll Equity Rules, gave preliminary and final approval to the grant by TxDOT of financial assistance in the amount of \$1.3 million to be used for preparing environmental documents and preliminary engineering services for the Project; and

WHEREAS, in Minute Order No. 113253, approved on August 30, 2012, the Commission authorized the Executive Director of TxDOT to enter into a financial assistance agreement with the CRRMA in accordance with the Toll Equity Rules; and

WHEREAS, on December 12, 2012, the CRRMA Board of Directors authorized its Executive Director to enter into a financial assistance agreement with TxDOT for the funds necessary to complete the work contemplated by this Agreement; and

WHEREAS, effective January 22, 2013, a Financial Assistance Agreement was executed on behalf of TxDOT and the CRRMA setting forth the terms and conditions for the use of the funds to be made available for the Project.

AGREEMENT

Now, therefore, in consideration of these premises and of the mutual covenants and agreements of the parties hereto, and for good and other valuable consideration, TxDOT and the Authority agree as follows:

1. **Scope of Work – Authority.** As of the effective date of this Agreement, the Authority is authorized to commence and will undertake and diligently perform the services and work on the Project, as more fully described in Exhibit B, Project Description and Authority Scope of Work ("Authority Work") to be performed for the Project located within the area more fully described in Exhibit A, Location Map of Project Limits. The Authority Work contemplated herein is limited to the preliminary engineering (schematic) design and environmental services only.

When the schematic design prepared as part of the preliminary engineering is complete, the Authority shall submit to the TxDOT engineer the schematic and related information identified in 43 TEX. ADMIN. CODE § 27.56(c)(2).

The preliminary engineering design 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, 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). The Authority may request exceptions to design criteria subject to the approval of the Executive Director of TxDOT pursuant to 43 Tex. Admin. Code §27.56(b)(2). For purposes of this Agreement, the latest versions of the design manuals and AASHTO standards are those in effect on the date that a process is initiated to procure construction services for the project.

2. **No Final Design or Construction Authorized.** Notwithstanding the authorization to begin preliminary engineering and environmental services as described above, the Authority shall not commence any final design or construction services until a Project Development Agreement for such activities is executed by the parties or until TxDOT otherwise consents, in writing, to such activities.

3. **Termination of Agreement.** 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 satisfactory completion of all responsibilities and obligations described herein;
or
- c. By the parties entering into a Project Development Agreement which supersedes this Agreement.

4. **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, 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.

5. **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.

6. **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

7. **Written 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.

8. **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
300 N. Campbell, 2nd Floor
El Paso, Texas 79901
Attention: Raymond L. Telles, Executive Director

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

with copies to:

Locke Lord LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Attention: C. Brian Cassidy

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

9. **Receipt of Notices.** All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided for above.

10. **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.

11. **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 giving any benefits, rights, remedies, or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.

12. **Relationship of the Parties.** 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.

13. **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.

14. **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.

This Agreement shall be effective as of the 27th day of March, 2013.

TEXAS DEPARTMENT OF TRANSPORTATION

By: 
Phil Wilson, Executive Director

CAMINO REAL REGIONAL MOBILITY AUTHORITY

By: 
Raymond L. Telles, Executive Director

EXHIBIT A

Location Map of Project Limits

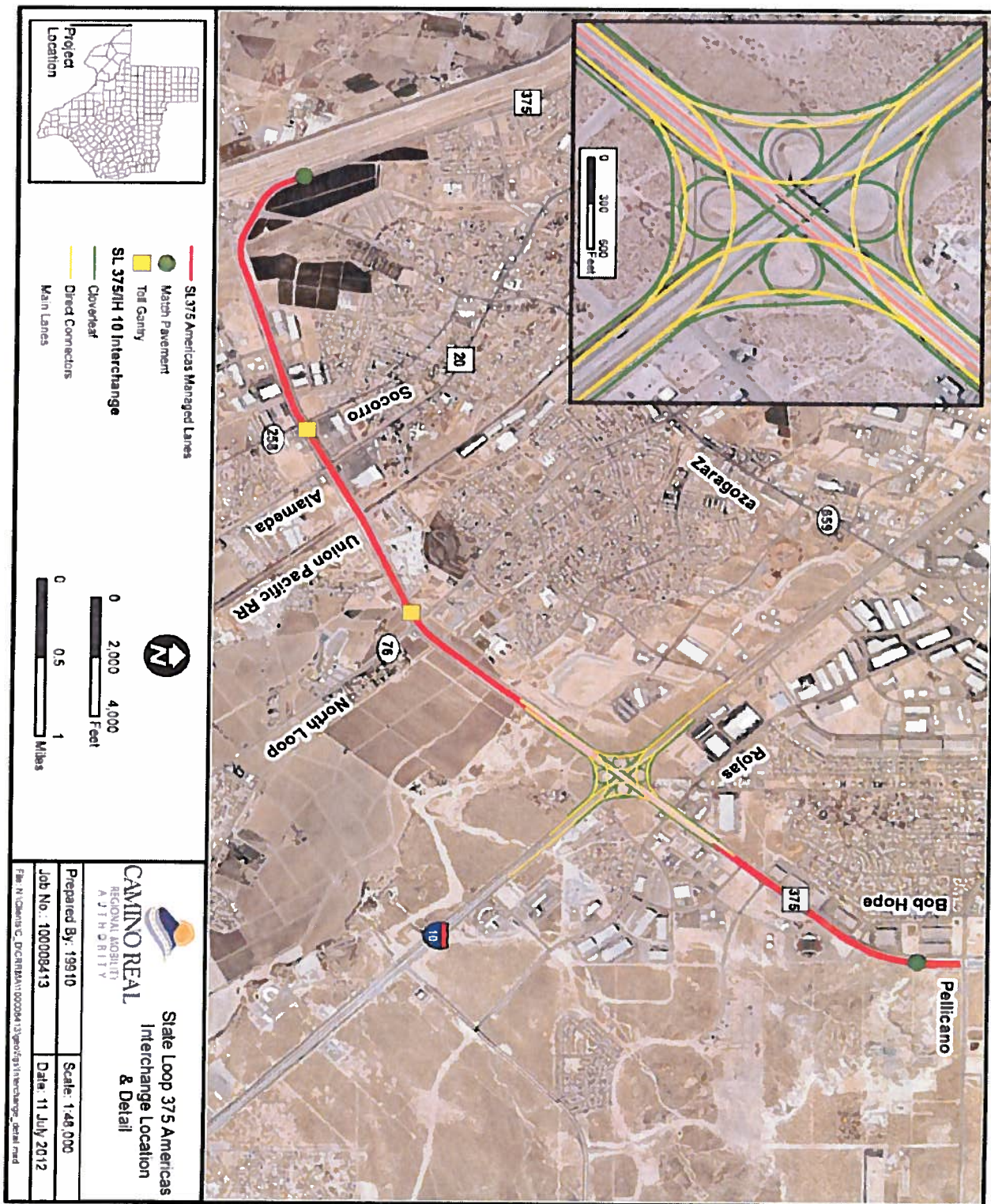


EXHIBIT B

Loop 375 (Americas Avenue) Managed Lanes project

Project Description and Authority Scope of Work

Project Description

The CSJ number for the project is 2552-03-049.

The limits of the proposed improvements for the Loop 375 (Americas Avenue) project are approximately from Zaragoza Road to Pellicano Drive. The improvements to be considered in this study include the addition of two managed (toll) lanes (one in each direction) to the existing four non-toll lanes along a portion or totality of the study corridor. Other improvements that will be considered along the corridor are the extension of the frontage roads over the Union Pacific Railroad as well as modification of entrance and exit ramps to and from the main lanes of Loop 375 between Zaragoza Road and Alameda Avenue, since these would affect the accessibility to the proposed managed lanes.

Scope of Work

The general scope of work is to develop preliminary engineering design (i.e., schematic design) for the proposed improvements, conduct public involvement activities, and to conduct environmental studies in accordance to the National Environmental Policy Act of 1969 (NEPA), leading to an environmental clearance of a “build” alternative for the Project or the selection of the No-Build alternative.

Design Schematic

The schematic design will analyze the build and no build alternatives for the improvements to the project corridor. The final work product will include as a minimum the following elements:

- Typical sections
- Roadway plan and profile, including existing and proposed horizontal and vertical alignments.
- Proposed and existing right of way limits
- Current and projected traffic volumes
- Utility conflicts and adjustments analysis
- Drainage analysis
- Preliminary traffic control and sequencing of construction
- Preliminary toll infrastructure layout, including proposed location of toll gantries
- Preliminary signage plan, including location and text of sign along the corridor
- Cost estimates

Public Involvement

The Authority shall implement a public involvement program to support the NEPA process in accordance with 23 CFR 771, 36 CFR 800 and TAC Title 43, Part 1, Chapter 2. Activities shall include measures to obtain public input and conducting two public meetings and a public hearing for the Project.

Environmental Studies

The Authority shall perform tasks to complete technical environmental studies and advance the Project through final NEPA approval. The Authority shall prepare an environmental document and associated technical support documentation in accordance with the requirements of 23 CFR 771.119, FHWA T 6640.8A, Title 43, Texas Administrative Code, Chapter 2, TxDOT's Environmental Manual, and current TxDOT guidelines, policies, procedures, and all applicable Standards of Uniformity (SOU) in effect as of the date of execution of this Agreement. The environmental document shall document the social, economic, and environmental conditions and potential impacts of the proposed project and shall contain sufficient detail to meet regulatory requirements for legal sufficiency.

In advance of preparing the environmental document, the Authority will coordinate with TxDOT to determine the appropriate level of documentation to be prepared for this Project (e.g., Environmental Assessment [EA]). Subsequently, the Authority shall submit a detailed annotated outline of the proposed document for TxDOT's approval.

The deliverable for these services will be an environmental document and the associated technical reports, along with its respective clearance or a statement, that supports the selection of the Build or the No-Build alternative that satisfies NEPA and other federal and state requirements.

Related Work to be Provided by Others

Certain items necessary to complete the Scope of Work are to be completed by others and supplied to the Authority. Those items include, but are not limited to:

- The Regional Toll Analysis, which is required for metropolitan areas that have an existing or planned network of toll facilities, is to be provided by the El Paso Metropolitan Planning Organization, in coordination with TxDOT,
- Aerial photography and mapping are to be provided by TxDOT
- Corridor Analysis data that are required for environmental analysis and pavement design (i.e., current and projected traffic volumes, truck percentages, ESAL data, K-factors), are to be provided by TxDOT

[END OF EXHIBIT]