

CAMINO REAL REGIONAL MOBILITY AUTHORITY BOARD RESOLUTION

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is managing the development, design and construction of the Eastlake Blvd., Phase 1 Project (Eastlake Project) in cooperation with El Paso County as part of the 2013 El Paso County Comprehensive Mobility Plan;

WHEREAS, Texas Alliance Group (TAG) operates a commercial business located near or adjacent to the construction activities underway for the Eastlake Project and TAG's activities, actions, omissions and/or operations has caused presently known and identifiable damage to the Project; and

WHEREAS, TAG has agreed to make a monetary payment to the CRRMA in order to remediate and repair the referenced damages and the CRRMA desires to accept such payment through the execution of a settlement agreement.

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

THAT the Executive Director is hereby authorized to execute a Settlement Agreement with Texas Alliance Group, including any additional documents or materials as may be necessary, in order to provide for the settlement of presently known and identifiable damages related to the Eastlake Blvd., Phase 1 Project.

PASSED AND APPROVED THIS 11TH DAY OF SEPTEMBER 2019.

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

ATTEST:

Joyce A. Wilson, Chair

Joe R. Fernandez
Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of the last day set forth on the signature page (the “Effective Date”) by and between Camino Real Regional Mobility Authority (the “CRRMA”) and Texas Alliance Group (“TAG”). The CRRMA and TAG are referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

WHEREAS, the CRRMA commenced the development, design, and construction of the Eastlake Boulevard, Phase 1 Project located in El Paso, Texas (the “Project”);

WHEREAS, TAG operates a commercial business and possesses an interest in real property located near or adjacent to the Project (the “Property”);

WHEREAS, TAG’s activities, actions, omissions, and/or operations of its commercial business in connection with the Property has caused presently known and identifiable damage to or in connection with the Project and/or impaired its value (the “Damages”);

WHEREAS, the CRRMA has determined that the presently known and identifiable Damages TAG caused to the Project will require remediation and repairs, and the CRRMA is seeking recoveries, reimbursements, and/or other sums from TAG in connection with paying for such remediation and repairs (the “Claim”);

WHEREAS, the Parties desire to resolve their dispute without the necessity of incurring further costs and undertaking further litigation, and TAG has agreed to make a monetary payment to the CRRMA on account of the Claim as set forth herein;

NOW, THEREFORE, in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1. Payment of Settlement Amount. In full consideration of the promises, covenants, and other terms and conditions provided herein, TAG agrees to make a single, lump sum payment to the CRRMA in the amount of \$8,767.50 (EIGHT THOUSAND SEVEN HUNDRED SIXTY SEVEN AND 50/100 DOLLARS) (the “Settlement Sum”). The Settlement Sum shall be made in accordance with the payment instructions set forth in Section 2 immediately below, and must be received in full within fourteen (14) days from the Effective Date of this Agreement (the “Payment Date”). If the Settlement Payment is not received by the CRRMA on or before the Payment Date, this Settlement Agreement shall be null and void.

2. Payment Instructions. The Settlement Sum shall be made payable by check to “Camino Real Regional Mobility Authority” mailed or hand delivered to the CRRMA at 801 Texas Avenue, El Paso, Texas 79901.

3. Conditions Precedent. The validity and effectiveness of this Agreement and the release set forth herein are conditioned upon the Parties' mutual delivery of an executed copy of this Agreement and the CRRMA's receipt of the Settlement Sum on or before the Payment Date.

4. CRRMA's Consideration for Settlement Sum. As express consideration for receipt of the Settlement Sum from TAG, the CRRMA agrees not to commence litigation against TAG on account of the presently known and identifiable Damages that gave rise to the Claim.

5. Attorneys' Fees. If any Party hereto commences any action arising out of this Agreement, including, without limitation, any action to enforce or interpret this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable and necessary attorneys' fees and other expenses incurred in such action.

6. Additional Terms.

a. Notwithstanding any other language in this Agreement, nothing herein shall be deemed a release of any rights created by this Agreement.

b. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Texas, exclusive of that State's conflict of law provisions. In the event that there is a lawsuit between the Parties arising from or related to this Agreement, including but not limited to its interpretation or performance, then the Parties agree that such lawsuit shall be venued in El Paso County, Texas.

c. This Agreement may be executed in one or more counterparts, which together shall constitute one Agreement upon the signature of the last Party.

d. This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any one Party.

e. This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter herein. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties hereto. The Parties hereto acknowledge that each Party has not executed this Agreement in reliance on any such promise, representation, or warranty.

f. The Parties agree to do all acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement, including but not limited to, the execution, filing or recording of any reporting documents, affidavits, assignments or agreements. The Parties further agree to give reasonable cooperation and assistance to any other Party or Parties hereto in order to enable such other Party or Parties to secure the intended benefits of this Agreement.

g. This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. All modifications must be in writing and duly executed by all Parties. The waiver of any breach of this Agreement shall not operate nor be construed as a waiver of any similar, prior, or subsequent breach of this Agreement.

h. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the Parties agree that all of the other terms and provisions of this Agreement are valid and binding and shall have full force and effect as if the invalid portion had not been included unless the invalidated provision relates to the consideration provided hereunder, in which case the Agreement may be declared null and void.

i. The paragraph headings utilized in this Agreement are for the purposes of convenience of reference only, and shall not be used to construe, modify, alter, or supplement the language following such headings.

j. In entering into this Agreement, the Parties hereto represent that they have each relied on the advice of their respective attorneys, who are the attorneys of their own choice, or they have had the opportunity to do so; that the terms of this Agreement have been completely read and explained to the Parties by their respective counsel or read by them personally; and that those terms are fully understood and voluntarily accepted by the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed as of the last day set forth below:

Dated: _____

Camino Real Regional Mobility Authority

By: _____

Its: _____

Dated: _____

Texas Alliance Group

By: _____

Its: _____