

**CAMINO REAL REGIONAL MOBILITY AUTHORITY  
BOARD RESOLUTION**

**WHEREAS**, the Camino Real Regional Mobility Authority (CRRMA) is authorized to plan, finance, design, construct, maintain, or operate “Transportation Projects” as that term is defined within Texas Transportation Code, Section 370; and

**WHEREAS**, section 370.003(14)(Q) of the Texas Transportation Code effectively defines a transportation project to include an aerial cable car or aerial tramway for the transportation of persons or property, or both, that is located in El Paso; and

**WHEREAS**, the Wyler Aerial Tramway (Tramway) is located within the Franklin Mountains State Park in El Paso, Texas and is operated by the Texas Parks & Wildlife Department (TPWD); and

**WHEREAS**, TPWD intends to replace the Tramway and to construct certain additional associated amenities, but desires that the CRRMA manage the design and construction of such improvements and the parties therefore desire to enter into an agreement to memorialize the roles and responsibilities of each party.

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

**THAT** the CRRMA Executive Director is authorized to execute a Project Development Agreement for Design and Construction of the Wyler Aerial Tramway Project with the Texas Parks & Wildlife Department.

**PASSED AND APPROVED THIS 10<sup>TH</sup> DAY OF MARCH 2021.**

**CAMINO REAL REGIONAL  
MOBILITY AUTHORITY**

**ATTEST:**

\_\_\_\_\_  
Joyce A. Wilson, Chair

\_\_\_\_\_  
Luis Rosas, Board Secretary

**APPROVED AS TO CONTENT:**

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

Wyler Aerial Tramway PDA  
Texas Parks & Wildlife Department

**PROJECT DEVELOPMENT AGREEMENT FOR**  
**DESIGN AND CONSTRUCTION**  
**OF THE**  
**WYLER AERIAL TRAMWAY PROJECT**

**WYLER AERIAL TRAMWAY PROJECT  
PROJECT DEVELOPMENT AGREEMENT FOR DESIGN AND CONSTRUCTION**

**THIS AGREEMENT**, by and between the **TEXAS PARKS AND WILDLIFE DEPARTMENT**, an agency of the State of Texas, as authorized by the Texas Parks and Wildlife Commission, hereinafter identified as “TPWD,” and the **CAMINO REAL REGIONAL MOBILITY AUTHORITY**, a political subdivision of the State of Texas, hereinafter identified as the “Authority” (each a “Party” and jointly referred to as the “Parties”), is executed to be effective this \_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”). This Agreement is entered by the Parties pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the Regional Mobility Authority Act, Chapter 370, Texas Transportation Code.

**WITNESSETH**

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

**WHEREAS**, in Minute Order No. 110573 adopted by the TTC on June 29, 2006, the TTC 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 (TAC) § 26.11 *et seq.* (the “RMA Rules”), as well as its own policies and procedures; and

**WHEREAS**, the RMA Act authorizes regional mobility authorities to study, evaluate, design, finance, acquire, construct, maintain, repair, and operate transportation projects; and

**WHEREAS**, section 370.003(14)(Q) of the RMA Act defines a transportation project to include an aerial cable car or aerial tramway for the transportation of persons or property, or both, that is located in the jurisdiction of an authority created under Section 370.031(c); and

**WHEREAS**, the Authority was created under Section 370.031(c); and

**WHEREAS**, the Wyler Aerial Tramway (the “Tramway”), is located in the Franklin Mountains State Park in El Paso, Texas; and

**WHEREAS**, pursuant to the adoption of Senate Bill 500 by the 86th Legislature, \$5 million was appropriated to TPWD for overhaul and construction related to the Tramway (the “Appropriated Funds”); and

**WHEREAS**, TPWD has used a portion of the Appropriated Funds to conduct a replacement feasibility study to develop an evaluation of replacement options for the Tramway; and

**WHEREAS**, TPWD intends to replace the Tramway and to construct certain additional improvements, as further described in Attachment “A” (the “Project”), but desires that the Authority: (i) manage the design and construction of the Project through contracts (respectively the “Design Contract” and the “Construction Contract”, and collectively the “Contracts”), and (ii) procure the services of the contractors (respectively the “Design Contractor” and the “Construction Contractor”, and collectively the “Contractors”) pursuant to the RMA Act; and

**WHEREAS**, TPWD will participate in the selection of the Contractor(s), approval of the design of the Project, and will inspect and concur in final acceptance of the Project; and

**WHEREAS**, TPWD will be responsible for operations and maintenance of the Project, including portions thereof, once design and construction of all or portions of the Project is completed by the Authority; and

**WHEREAS**, this Agreement is necessary and desirable to clarify the relationship between TPWD and the Authority and to facilitate the development, design, and construction of the Project.

## **A G R E E M E N T**

**NOW, THEREFORE**, in consideration of these premises and of the mutual covenants and agreements of the Parties hereto to be by them respectively kept and performed as hereinafter set forth, TPWD and the Authority agree as follows:

1. **Performance of Obligations.** Time is of the essence in the performance of the obligations under this Agreement. Project Funds described herein, must be expended no later than August 2025. TPWD and the Authority agree to use good faith efforts to timely resolve issues that arise between the Parties during the development of the Project. Without limiting the provisions of this Agreement, TPWD and the Authority will take all actions that are consistent with each of their undertakings pursuant to this Agreement and in furtherance of the purposes of this Agreement and which are consistent with applicable law.
2. **Sources of Funds.** The parties acknowledge and agree that TPWD will pay the unencumbered and unexpended balance of the Appropriated Funds in the amount of FOUR MILLION SIX HUNDRED NINETY-SEVEN THOUSAND SEVENTY-NINE AND 92/100 DOLLARS (\$4,697,079.92) (the “Project Funds”) for design and construction of the Project.
3. **No Additional Funding.** The Parties acknowledge that the Project Funds represent the total amount of funding available for the Project as of the date of this Agreement, and that neither Party will be obligated to provide any additional funding. In the event additional funding is required to complete the Project, the Parties agree to work together to pursue funding from available sources.
4. **Unexpended Funding.** In the event there are unexpended Project Funds at the completion of this Agreement and approved Project, or if this Agreement is terminated per Section 18, the Authority shall remit to TPWD the remaining balance of the Project Funds that were paid to the Authority pursuant to this Agreement.

## 5. Payment Terms.

- a. Upon execution of this Agreement, TPWD will pay the Authority the initial payment of thirty three percent (33%) of the Project Funds.
- b. A payment schedule for the payment of the balance of the Project Funds will be determined upon mutual agreement between TPWD and the Authority pursuant to an amendment to this Agreement which the parties intend to execute no later than August 31, 2021. The payment schedule will be developed in order to align with a proposed schedule for the development of the Project.
- c. The Authority shall utilize these funds for all costs reasonably incurred in procuring the Design Contractor, preparing and entering into the Design Contract, and preparation of an estimated scope and fee for the design of the Project using the Project Funds it receives from TPWD. Eligible expenses may include, but are not limited to, the cost of services provided by the Authority's legal counsel, financial advisor, or general engineering consultant in connection with the Project, and administrative expenses incurred by the Authority. Expenses described in this subsection (b) are not subject to TPWD approval described in subsection (d) below.
- d. It is the intent of both parties that the Project Funds described herein shall be used for construction of the Project in addition to design expenses and overhead as described above. Following completion of the design work, TPWD and the Authority shall mutually agree in writing upon the scope of construction services to utilize the remaining amount of Project Funds.
  - i. In the event the cost to construct the Project exceeds the amounts remaining from the Project Funds, the Parties acknowledge that the scope of construction services may be performed in phases as funding becomes available, or the Parties will work together to reduce the scope of the Project to achieve a cost within the amount remaining from the Project Funds. The Authority will not incur any expenses under this Agreement in excess of the Project Funds unless authorized in writing by TPWD to do so, and only then if funding has been committed in an amount adequate to pay such expenses.
  - ii. If the cost to construct the Project is less than the amounts remaining from the Project Funds, the Parties may work together to identify the best use of such remaining funds. Any resulting modification to the scope of the Project must comply with the permissible use of the Appropriated Funds under Senate Bill 500 and must be approved in the form of an amendment to this Agreement signed by both Parties.
- e. The Project Funds may be used for only those actual costs incurred in carrying out the services authorized in this Agreement. Prior to each payment to the Contractors the Authority shall submit copies of proposed invoices to TPWD to review whether such invoices represent eligible expenditures on the services provided in accordance with the terms of this Agreement. TPWD shall use good faith efforts to raise any objections to the proposed invoice within five (5) business days after

TPWD's receipt of such invoice, or such additional period of time as may be reasonably necessary under the circumstances based on the complexity of the invoice. The Authority may issue payment for an invoice if the TPWD does not raise an objection within ten (10) business days after the date the Authority transmitted such invoice to TPWD.

## **6. Audit.**

- a. 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.
- b. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract between the Authority and the Contractor. The acceptance of funds directly under the contract or indirectly through a subcontract under the contracts 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. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- c. TPWD, at its expense, may audit the Project at any time. Upon completion of the Project, TPWD, or an independent auditor approved by TPWD, at TPWD's option and expense, may perform an audit of the Project's costs. Any funds due to the Authority, TPWD, 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.

## **7. Use of TPWD Property.**

- a. The Authority shall have, and TPWD hereby grants to the Authority, a license and right of entry on, over, and under such area and property owned by, subsequently acquired, and otherwise under TPWD's control as necessary to enable the Authority to cause the Project to be designed and constructed, as such property and envisioned Project is generally depicted on Exhibit "A" attached hereto (the "Property"). Such license and rights of entry shall remain in effect unless and until the work is completed or development of the Project is terminated by TPWD. All use of the Property by the Authority or its Contractors shall comply with the requirements of applicable state and federal law and shall not damage, impair safety, impede maintenance, or otherwise restrict the operation of the balance of the Property.
- b. TPWD will provide to the Authority information TPWD may have concerning the environmental status of the Property. The Authority does not assume any responsibility for environmental or other latent conditions affecting the Property,

and the Authority shall cease any development activities in the event any environmental or other conditions are discovered that would prevent development activities from being performed. This Agreement is subject to all covenants, easements, reservations, restrictions and other matters applicable to the Property, and the Authority is using the Property subject to rights, if any, of any other persons or entities.

## 8. Contracting Procedures.

- a. The Authority will procure and develop the Project pursuant to the RMA Act and the Authority's Policy for Procurement Goods and Services.
- b. In lieu of procuring a Design Contract, the Authority and TPWD agree that the Authority may issue a work authorization under its existing general engineering consultant contract with Atkins to perform the design services for the Project. Both parties have previously considered the qualification of Atkins to perform services required with respect to the Project, and both have concluded that Atkins is qualified to do so. In such event, for purposes of this Agreement, the general engineering consultant will be considered the "Design Contractor" and the work authorization (as governed by the general engineering construction contract) will be considered the "Design Contract".
- c. TPWD representatives shall have the opportunity to observe the procurement process for purposes of confirming compliance with applicable laws and regulations. TPWD, at its own discretion, may serve on the evaluation committee as a voting or non-voting member for contracts awarded under this Agreement.
- d. The Authority shall use its best efforts to ensure compliance by its selected Contractors with the applicable provisions of this Agreement.
- e. The Authority shall ensure that the services provided under the Contracts comply with TPWD's *Adoption of Standard Building Codes Directive*, dated September 1, 2017.
- f. The Contracts shall provide that (i) any and all express or implied warranties and representations in the nature of warranties by the Contractors, (ii) any warranty bonds or insurance provided pursuant to the Contracts, and (iii) the indemnities shall be jointly made to or for the benefit of both TPWD and the Authority. Following completion of construction, TPWD shall have primary responsibility for prosecuting any warranties under the Construction Contract with respect to the Project. TPWD shall be an express third-party beneficiary under the Construction Contract for purposes of enforcement of the indemnities and warranties in favor of TPWD. The Authority shall cooperate with TPWD in causing the Construction Contractor to comply with all such warranty provisions upon the terms and for the time periods specified in the Construction Contract.

**9. HUB Policy; DBE Guidelines.**

- a. The Authority shall promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB)/Disadvantaged Business Enterprise (DBE) in all contracts.
- b. The Authority shall require its selected contractor to comply with the Authority's Business Opportunity Program and Policy.
- c. The Authority shall include documentation reflecting compliance with this section in progress reports provided for under Section 17 below.

**10. Design Obligations of the Authority; Control of Work.**

- a. The Authority, through the Design Contractor, shall be responsible for the performance of preliminary engineering, final design, and environmental studies for the Project, including:
  - i. ensuring that all environmental permits, issues, and commitments are adhered to in the Project design; and
  - ii. ensuring that all schematic design, required reports, and construction plans are signed, sealed and dated by a licensed professional in the State of Texas.
- b. Except as hereinafter provided, the Authority, in consultation with TPWD, shall have authority and responsibility for:
  - i. the engineering and environmental studies of the Project and all features thereof.
  - ii. the selection of legal counsel, consultants, engineers, architects, surveyors, design engineers, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, contractors, and other parties retained in connection with the design of the Project; and
  - iii. the commencement, sequencing, and timing of design activities and other work.
- c. The Authority and TPWD will hold a design concept conference to gain concurrence on the design criteria and to determine the frequency of preliminary design and plan review meetings to be conducted at least monthly.
  - i. TPWD personnel will participate and provide comments on the design work.
  - ii. TPWD has the right to approve the design provided that failure to approve the design does not affect the obligation of TPWD from paying costs incurred by the Authority for the design.

11. **Construction.** Upon approval of design plans and budget, the Authority shall procure the Construction Contract.

- a. Insurance. The Construction Contract shall provide that the Authority, TPWD, the State of Texas, the Commission and their respective successors, assigns, officeholders, officers, directors, commissioners, consultants and employees shall be listed as “additional insureds” with respect to any insurance for which the Construction Contractor must obtain an “additional insured” rider or amendment.
- b. Pre-Construction Conference. The Authority shall conduct a pre-construction conference. TPWD will be in attendance to provide information as needed.
- c. TPWD reserves the right to inspect the construction service to ensure compliance with TPWD adopted codes during the course of the Project and upon completion before final acceptance. In the event TPWD representatives discover issues of concern during an inspection they shall immediately notify the Authority, in writing, of the issue and the specific concern related to Code compliance. Within two (2) business days of receipt of such notice the Authority shall convene a meeting of a representative of the Contractor, TPWD, and the Authority to address the concern and determine an appropriate course of action.
- d. Within two (2) Business Days after the Authority receives notice from the Construction Contractor of the date it expects to achieve substantial completion of the Project or a portion thereof for which construction has been authorized (but not less than ten (10) Business Days prior to such date), the Authority shall provide TPWD with written notification of such date. After such notice, TPWD and the Authority shall meet and confer and exchange information on a regular basis with the goal being TPWD’s and the Authority’s orderly and timely inspection and review of such work for substantial compliance with the plans, standards and specifications in the Construction Contract, and identification of patent defects, and for the joint preparation of a written punch list with which both parties concur.
- e. The Authority shall cause punch list items, including patent defects identified by the Parties, to be diligently completed, following substantial completion of the Project, and no more than thirty (30) days upon completion.
- f. Upon completion of the punch list work, TPWD shall issue and sign a notification of completion acknowledging that the Project is complete, and the Authority may issue a notification of final acceptance to the Construction Contractor. Upon final acceptance of the Project, the Authority will provide a copy of the notification of final acceptance to TPWD.

12. **Compliance with Texas Accessibility Standards and ADA.** The Authority shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**13. Responsibility for Construction.**

- a. To the extent authorized under this Agreement the Authority is responsible for the construction of the Project.
- b. Without limiting any of its other obligations under this Agreement, the Authority in consultation with TPWD, shall have authority and responsibility for:
  - i. The commencement, sequencing and timing of construction activities and other work;
  - ii. Construction oversight and inspection; and
  - iii. The acceptance or rejection of work, materials, or other deliverables performed under the Construction Contract.
- c. All change orders modifying the scope of work for the construction of the Project must be approved by TPWD prior to the Authority's issuance of the change order.
- d. NEITHER TPWD 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. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS CREATING ANY LIABILITY IN FAVOR OF ANY THIRD PARTY OR PARTIES AGAINST EITHER TPWD OR THE AUTHORITY, NOR SHALL IT EVER BE CONSTRUED AS RELIEVING ANY THIRD PARTY OR PARTIES FROM ANY LIABILITIES OF SUCH THIRD PARTY OR PARTIES TO TPWD OR THE AUTHORITY.

**14. Compliance With Applicable Laws.** It is the Authority's obligation to monitor its Contractors and use good faith efforts to ensure that the Contractors prosecute their scopes of work in compliance with all applicable state and federal laws.

**15. Maintenance of Records.** All records and documents prepared by the Authority under this Agreement must be made available to authorized representatives of TPWD during normal work hours. All records and documents prepared under this Agreement must be maintained by the Authority for seven (7) years after final payment of construction costs incurred in connection with the Project or until all audit, claim, and litigation matters are resolved, whichever is later. Additionally, TPWD, and its duly authorized representatives shall have access to all records in the actual or constructive possession of the Authority that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. Notwithstanding the foregoing, the Authority shall comply with all laws pertaining to the retention of records and the provision of access thereto.

**16. Books and Records.** The Authority shall maintain its books and records in accordance with generally accepted accounting principles in the United States, subject to any exceptions required by existing bond indentures of the Authority, and shall provide TPWD

with a copy of any audit of those books and records.

## 17. Reports and Plans.

- a. Progress Reports.
  - i. During the design phase of this project, the Authority shall deliver to TPWD monthly progress reports.
  - ii. During the construction phase, the Authority shall deliver to TPWD quarterly progress reports. Quarterly progress reports shall include documentation on the Authority's compliance with the HUB/DBE policy.
- b. Final Report. Within six (6) months after completion of the Project or a discrete portion thereof, the Authority will deliver to TPWD the final record drawings, signed, sealed and dated by a licensed professional in the State of Texas, certifying that the Project were constructed in accordance with the approved plans and specifications, and approved contract revisions.

## 18. Termination of this Agreement. This Agreement may be terminated upon the occurrence of any of the following conditions:

- a. **Mutual Termination.** This Agreement may be terminated by written agreement and consent of the Parties hereto.
- b. **Dissolution of the Authority.** In the event that the Authority is dissolved, ceases to function, or all or substantially all of its operations are assumed by a third party other than another governmental entity performing essentially the same functions as the Authority.
- c. **Material Breach.** This Agreement may be terminated by either party, upon a material breach of the Agreement by the other, after following the procedures outlined in Section 19 below.
- d. **Completion.** By satisfactory completion of all responsibilities and obligations described herein.
  - i. The parties agree that the provisions of Section 20(j) regarding hold harmless, release, and indemnity shall survive the termination of this Agreement.

## 19. Defaults and Remedies

- a. **Authority Defaults.** The Authority shall be in breach under this Agreement if the Authority fails to observe or perform any covenant, agreement, term or condition required to be observed or performed by the Authority under this Agreement (an "Authority Default").
- b. **Authority Cure Periods.** For the purpose of TPWD's exercise of remedies upon

an Authority Default, the Authority shall have a cure period of thirty (30) days after TPWD delivers to the Authority written notice of the Authority Default; provided that if the Authority Default is of such a nature that the cure cannot with diligence be completed within such time period and the Authority has commenced meaningful steps to cure promptly after receiving the default notice, the Authority shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to diligently effect cure.

- c. **TPWD Defaults.** TPWD shall be in breach under this Agreement if TPWD fails to observe or perform any covenant, agreement, term or condition required to be observed or performed by TPWD under this Agreement (a “TPWD Default”).
- d. **TPWD Cure Periods.** For the purpose of the Authority’s exercise of remedies upon a TPWD Default, TPWD shall have a cure period of thirty (30) days after the Authority delivers to TPWD written notice of the TPWD Default; provided that if the TPWD Default is of such a nature that the cure cannot with diligence be completed within such time period and TPWD has commenced meaningful steps to cure immediately after receiving the default notice, TPWD shall have such additional period of time, up to a maximum cure period of one hundred twenty (120) days, as is reasonably necessary to diligently effect such cure.
- e. **Remedies.** This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

## 20. Other Terms and Conditions.

- a. **Dispute Resolution.** All claims arising between the parties under this Agreement shall be resolved in accordance with the dispute resolution process provided for in Chapter 2260 of Texas Government Code.
- b. **Successors and Assigns.** This Agreement shall bind, and shall be for the sole and exclusive benefit of, the Parties and their legal successors, including without limitation any successor agency to TPWD or the Authority. Other than as provided in the preceding sentence, neither TPWD 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.
- c. **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, TPWD, the Authority, or of a local public body during his/her tenure shall have interest in this Agreement or the benefits/proceeds thereof.
- d. **Debarment Requirements.** The Authority shall require its Contractors to complete the "Debarment Certification", attached hereto as Exhibit “B” and made a part hereof for all purposes. All subcontractors to the Contractors must complete the "Lower Tier Participation Debarment Certification", a sample copy being

attached hereto as Exhibit “C” and made a part hereof for all purposes.

- e. **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.
- f. **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 TPWD.
- g. **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:

Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, TX 78744  
Attention: Executive Director

Camino Real Regional Mobility Authority  
801 Texas Avenue  
El Paso, Texas 79901  
Attention: Executive Director

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.

- h. **Gratuities.** Any person who is doing business with or who may do business with the Authority or TPWD under this Agreement may not make any offer of benefits, gifts, or favors to employees of the Authority or TPWD.
- i. **Limitations.** All covenants and obligations of TPWD 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 TPWD or the Authority shall have any personal obligations or liability hereunder.
- j. **HOLD HARMLESS, RELEASE, AND INDEMNITY.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY SHALL INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY AND ITS OFFICERS, DIRECTORS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES DUE TO THE MATERIALS OR ACTIVITIES OF THE FIRST PARTY, ITS AGENTS, OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT 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.

- k. **Sole Benefit.** This Agreement is entered into for the sole benefit of TPWD 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.
- l. **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, or joint venture or partnership, between TPWD and the Authority.
- m. **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, TPWD agrees that it will use all reasonable efforts to obtain said approval or action. Each signatory on behalf of TPWD and the Authority, as applicable, is fully authorized to bind that entity to the terms of this Agreement.
- n. **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, TPWD and the Authority have executed this Agreement in two (2) multiple counterparts on the dates shown herein below, effective on the date listed above.

**CAMINO REAL  
REGIONAL MOBILITY AUTHORITY**

**TEXAS PARKS AND  
WILDLIFE DEPARTMENT**

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

By: \_\_\_\_\_  
Carter Smith  
Executive Director

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

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

**EXHIBIT “A”**

**Wyler Aerial Tramway Project -  
Envisioned Limits and Description**

## Wyler Aerial Tramway Project - Envisioned Limits and Description

The Wyler Aerial Tramway project provides for the replacement of the existing and currently non-functioning aerial tramway within the Franklin Mountains State Park. The existing tram was deemed beyond its designed life expectancy and unsafe for continued public use. The project will provide a new upgraded aerial tramway including a base station and aerial observation platform. The project, upon funding availability, may be developed in phases which will be defined further during the Design stage.

The new base station facility will be located adjacent to and slightly north of the existing facility and will utilize the same parking lot (expanded and reconfigured) and site access road. The base station facility will house the various spaces required for tram operations including ticketing, queuing, gift shop and display functions, staff functions and required mechanical, electrical and storage spaces. A staff restroom will be provided inside the building. Site improvements at the base station will include upgraded utilities and a new loop drive allowing for one-way traffic and accessibility for busses and large vehicles. Additional parking will be provided along the new loop drive. Site amenities for visitors will include, plaza / gathering spaces, shade structures, interpretive gardens and an outdoor amphitheater. Public restroom facilities will be located on the site near the main facility.

The new aerial observation platform will be located north of the existing upper observation deck. The upper observation platform will provide multiple view options of the surrounding region and will include amenities such as shade elements, seating options, telescope viewing, and informational graphics and displays. An enclosed interpretive pavilion will allow for educational sessions as well as provide visitors protection from elements at the top of the mountain. Self-composting toilets will be provided as well as a small guard station for tram operations staff.

# Wyler Aerial Tramway

Base and Aerial Stations

## Legend

-  Station
-  Project Area

Base Station

Aerial Station

Google Earth

© 2021 Google  
© 2021 NEGI



## EXHIBIT "B"

### Debarment Certificate

- (1) The CONTRACTOR certifies to the best of its knowledge and belief, that its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
  - (b) 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;
  - (c) 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
  - (d) Have not within a three-year period preceding this application/proposal had one or more public\* transactions terminated for cause or default.
- (2) 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

## EXHIBIT "C"

### 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