

**GENERAL MEETING OF THE BOARD OF DIRECTORS
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 05-06

WHEREAS, Texas Transportation Code authorizes the creation of a regional mobility authority for the purposes of constructing, maintaining, and operating one or more turnpike projects in a region of this state; and

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et seq.* (the "RMA Rules"); and

WHEREAS, the CTRMA identified the proposed 183-A Turnpike Project as its initial project in the petition filed under the RMA Rules; and

WHEREAS, in Minute Order No. 109877, approved on November 18, 2004, the Texas Transportation Commission granted its approval of the 183-A Turnpike Project and the development thereof by the CTRMA subject to the conditions specified; and

WHEREAS, to facilitate development and construction of the 183-A Turnpike Project, it is necessary to enter into a Project Development Agreement with TxDOT, specifying the extent and timing of review of project design submittals, clarifying the use of right-of-way, and addressing other project development issues; and

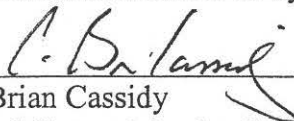
WHEREAS, CTRMA staff and TxDOT have negotiated the terms of the Project Development Agreement, a copy of which is attached hereto as Attachment "A."

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the CTRMA hereby approves the entry into a Project Development Agreement in the form, or in substantially similar form, attached hereto as Attachment "A," and

BE IT FURTHER RESOLVED, that the Chairman or his designee be authorized to execute such Agreement on behalf of the CTRMA.


Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of January 2005.

Submitted and reviewed by:



C. Brian Cassidy
Legal Counsel for the Central
Texas Regional Mobility Authority

Approved:



Robert E. Tesch
Chairman, Board of Directors
Resolution Number 05-06
Date Passed 01/26/05

DRAFT
12/29/04
For Discussion Purposes Only

**PROJECT DEVELOPMENT, OPERATION, AND MAINTENANCE
AGREEMENT
US 183-A TURNPIKE PROJECT**

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**183-A TURNPIKE PROJECT
PROJECT DEVELOPMENT, OPERATION, AND MAINTENANCE AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AGREEMENT, 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 **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**, a political subdivision, hereinafter identified as the "Authority," is executed to be effective this ____ day of _____, 2005.

WITNESSETH

WHEREAS, in Minute Order No. 85378 the State Department of Highways and Public Transportation, the predecessor to the Texas Department of Transportation, authorized the study and development of an alternative to the existing US 183 highway in Williamson County in order to relieve traffic congestion in the area; and

WHEREAS, the alternative has become commonly known as 183-A, described generally as a controlled access north/south highway on new alignment of approximately 11.6 miles in length, located generally east of existing US 183 and essentially paralleling that road, with a southern terminus at the south right-of-way limit of RM 620 (at existing US 183) and a northern terminus at the south fork of the San Gabriel River (see general location map attached as Exhibit A and made a part hereof for all purposes); and

WHEREAS, the development of 183-A as a potential turnpike (the "183-A Project") was initially pursued by the Texas Turnpike Authority ("TTA") division of the Texas Department of Transportation ("TxDOT"); and

WHEREAS, the TTA division secured a Record of Decision ("ROD") approving a Final Environmental Impact Statement ("FEIS") for the 183-A Project on July 19, 2001; and

WHEREAS, the TTA division initially considered the development of the 183-A Project as an element of the "2002 Project of the Central Texas Turnpike System" ("CTTP"), comprised of State Highway 130, State Highway 45 North and Loop 1 North; and

WHEREAS, the TTA division and TxDOT ultimately decided not to include the 183-A Project in the ultimate project financing for the CTTP; and

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WHEREAS, because of its connectivity with the CTTTP, the bond trust indenture for the CTTTP requires that the Texas Transportation Commission (“Commission”) assure that the construction of the 183-A Project is completed by December 31, 2011; and

WHEREAS, on September 3, 2002, Travis and Williamson Counties (the “Counties”) petitioned the Commission for authorization to form the Central Texas Regional Mobility Authority pursuant to provisions of the Texas Transportation Code; and

WHEREAS, the Counties identified the 183-A Project as the Authority’s “initial project” as required under 43 TEX. ADMIN. CODE, SEC. Chapter 26; and

WHEREAS, in Minute Order No. 109052 adopted by the Commission on October 31, 2002, the Commission authorized the creation of the Authority and ordered that the initial turnpike project to be developed, maintained, and operated by the Authority would be the proposed 183-A Project; and

WHEREAS, on _____, 2002 and _____, 2002, Travis and Williamson Counties, respectively, accepted the Commission’s Minute Order authorizing the formation 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 §26.01 *et seq.* (the “RMA Rules”), as well as its own policies and procedures; and

WHEREAS, in Minute Order No. 109227 the Commission authorized the extension of financial assistance to the Authority to assist with the development of the 183-A Project in the form of a grant not to exceed \$12.7 million (the “Development Toll Equity Grant”); and

WHEREAS, the Authority has utilized all or part of the Development Toll Equity Grant to further development of the 183-A Project and to initiate a process for seeking a developer for the Project through a Comprehensive Development Agreement (“CDA”); and

WHEREAS, the process for securing a CDA developer has been completed, a CDA developer has been selected, and the Authority is approaching the time at which it intends to sell turnpike revenue bonds and secure other forms of financing to facilitate construction and operation of the 183-A Project; and

WHEREAS, in Minute Order No. ____, the Commission authorized the extension of financial assistance to the Authority to assist in the acquisition, construction, operation, and maintenance of the 183-A Project in the form of a grant of up to \$65 million (the “Construction Toll Equity Grant”); and

WHEREAS, in Minute Order No. ____, the Commission approved the 183-A Project

pursuant to Transportation Code §370.187; and

WHEREAS, TxDOT is developing and implementing a Customer Service Center/ Violation Processing Center ("CSC/VPC") as part of the CTTTP, and the parties agree that it will benefit the Authority, TxDOT and the traveling public for the Authority to utilize the services of TxDOT's CSC/VPC for the Authority's customer service and violation processing services; and

WHEREAS, a portion of TxDOT's ongoing construction of facilities related to the CTTTP, depicted on Exhibit B attached hereto and incorporated herein, are within the approved FEIS limits of the 183-A Project, and TxDOT desires to transfer the operations and maintenance of certain facilities to the Authority; and

WHEREAS, a project development agreement is necessary and desirable to clarify the relationships between TXDOT and the Authority in connection with the development and operation of the 183-A Project, coordination of certain toll collection operations including customer service and violation enforcement processing, and the transfer of operations and maintenance of existing facilities.

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, TxDOT and the Authority agree as follows:

- 1. Support for the Project.** TxDOT acknowledges its approval of, and support for, the financing, design, construction, operation and maintenance by the Authority of the 183-A Project pursuant to the RMA Act. Without limiting the provisions of this Agreement, the Authority, TxDOT and the Commission will take all actions reasonably requested by the others which are consistent with this Agreement in furtherance of the purposes of this Agreement. Unless and until the Authority elects to abandon its efforts to construct and operate the 183-A Project, TxDOT shall not advance any alternative to or conflicting proposal for the development of 183-A. Further, in its consideration of any project that might affect the 183-A Project, TxDOT shall make every reasonable effort to minimize or avoid any adverse impact on the 183-A Project or its operations.
- 2. Exclusion from the State Highway System.** The 183-A Project shall not be considered part of the state highway system. TxDOT shall have no obligation to repair, maintain, or operate those portions of the 183-A Project under the ownership or control of the Authority, and shall not be liable for any liabilities or obligations related to or arising from the Authority's construction, operation, maintenance, or repair of the 183-A Project.
- 3. Operation and Maintenance of Section 9.** In connection with the development of the SH 45 North element of the CTTTP, TxDOT is constructing an interchange at the existing intersection of US 183 and FM 620. A portion of the interchange and related improvements extending north

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thereof, referred to as "Section 9," are located within the limits of the 183-A Project as identified in the FEIS and ROD as depicted in Exhibit B. It is the intent of TxDOT and the Authority that the operation and maintenance of those portions of Section 9 depicted on Exhibit "B" as "Maintained by CTRMA" shall be operated and maintained by the CTRMA as part of the 183-A Project. To the extent those portions of Section 9 to be operated and maintained by the Authority (the "Section 9 Property Interests") are located on property owned by TxDOT, TxDOT hereby consents to the use of such property by the Authority, including the right to construct, expand, and otherwise alter the property for purposes consistent with the development and operation of the 183-A Project. Such rights shall exist for so long as the Authority, or any legal successor or assigns, operates the 183-A Project. The foregoing right and obligation to utilize, operate, and maintain the Section 9 Property Interests shall include all structures and improvements of any kind situated thereon. To the extent necessary to document the rights granted in this Paragraph 3, the parties agree to execute such documents as are reasonably necessary to confirm such rights in a form suitable for filing in the real property records of Williamson and Travis Counties.

4. **Construction Obligations of the Authority; Control of Work.** Except as hereinafter provided in this Paragraph 4 or in Paragraph 3 above, the Authority shall be responsible for the design and construction of the 183-A Project, including all required utility relocation and/or adjustments. Except as hereinafter provided, the Authority shall have sole authority and responsibility for: (a) the design of the 183-A Project and all features thereof; (b) the selection of underwriters, investment bankers, financial advisors, legal counsel, consultants, construction managers, engineers, architects, surveyors, testing engineers and laboratories, inspecting engineers, geotechnical engineers and scientists, suppliers, contractors, subcontractors, vendors, sureties, and other parties retained in connection with the financing, design, construction, maintenance or operation of the 183-A Project; (c) the commencement, sequencing and timing of design and construction activities and other work; (d) the acceptance or rejection of work or other deliverables; and (e) the negotiation, bidding, and letting of contracts. Plans and specifications developed by the CTRMA for the 183-A Project must be in compliance with either the latest version of the design manuals or the latest version of the American Association of State Highway and Transportation Officials ("AASHTO") standards, provided that the CTRMA may request exceptions to the design standards pursuant to 43 TEX. ADMIN. CODE § 27.56(b)(2). The Executive Director of TxDOT may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental or other relevant factors, and that the proposed design is a prudent engineering solution. In making this determination, the Executive Director shall consider the fact that the 183-A Project will not be part of the state highway system. When design for the 183-A Project is 30% complete, the CTRMA shall submit, or shall cause its CDA Developer to submit, to TxDOT the information identified in 43 TEX. ADMIN. CODE § 27.56(c)(2). TxDOT shall complete its review and shall notify the CTRMA of its approval of the information within fifteen (15) business days. In the event TxDOT withholds approval of the information submitted, it shall notify the CTRMA of the reasons therefore within such 15-day period. The CTRMA will have an opportunity to correct or submit additional information to cure any defects or deviations identified by TxDOT. TxDOT shall review and respond to any such re-submittal with five (5) business days. Construction

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plans and specifications for the 183-A Project shall conform to the latest version of TxDOT's standard specifications for construction and maintenance of highways, streets, and bridges, provided that the Executive Director of TxDOT may approve use of alternative specifications if the alternative is determined to be sufficient to ensure the quality and durability of the finished product for its intended use and the safety of the traveling public. In making this determination, the Executive Director of TxDOT shall consider that the 183-A Project will not be a part of the state highway system. Construction oversight shall be the responsibility of the Authority. Offsite materials testing may be handled through a contract previously authorized and approved by TxDOT and the Authority (copy attached as Exhibit C and made a part hereof for all purposes.) The Authority shall use all reasonable efforts to achieve substantial completion of the 183-A Project by December 31, 2011.

5. **Responsibility for Design.** The Authority acknowledges, and fully accepts its responsibility for, the design, construction, maintenance, regulation, signage, illumination and overall operation of those portions of the 183-A Project depicted in Exhibit "B" as part of what it shall maintain, and hereby contracts to accept said responsibility in any litigation. Neither TxDOT 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 TxDOT 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 TxDOT or the Authority, but the Authority shall become fully subrogated to TxDOT and shall be entitled to maintain an action over and against any third party or parties legally liable for having caused the Authority or TxDOT to pay or disburse any sum of money in connection with any previously completed portion of Section 9.

6. **Environmental Permits and Compliance.** The Authority shall be responsible for compliance with applicable requirements of state and federal law regarding environmental permits, issues, and commitments (EPIC) for the 183-A Project. This shall include, without limitation, full compliance with the FEIS and the ROD and completion of any required Section 7 consultations and any required mitigation and additional permitting. In order to fully vest the Authority with the ability and obligation to comply with all EPIC, TxDOT hereby transfers and assigns to the Authority all rights and obligations granted under the FEIS and ROD for the 183-A Project, and TxDOT additionally transfers and assigns to the Authority all previously acquired mitigation credits associated with the 183-A Project.

7. **Contracting Procedures .** The Authority intends to use a Comprehensive Development Agreement ("CDA") to develop the 183-A Project. Such process is authorized under §370.305 through §370.312 of the RMA Act. TxDOT and FHWA representatives have observed the CDA procurement process and have participated in the review of competitive submittals. TxDOT shall in no way be liable for any claims, protests, or causes of action arising out of the CDA procurement process. The Authority shall ensure compliance by the CDA developer with the applicable provisions of this Agreement.

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8. **HUB Policy; DBE Guidelines.** The Authority shall require its CDA developer to comply with its Historically Underutilized Businesses Policy (the "HUB Policy") as set forth in the Authority's Resolution No. 03-60, as may be amended. Additionally, the Authority shall require its CDA developer to comply with the applicable DBE guidelines and regulations established in 49 CFR Part 23, Subpart D, as may be amended. In the event of a conflict between the Authority's policy and requirements of federal law, the latter shall control. The Authority shall provide quarterly reports to TxDOT regarding compliance with this paragraph.

9. **Compliance With Applicable Laws.** It is the Authority's obligation to monitor the CDA developer retained for the 183-A Project to ensure compliance with all state and federal laws, including without limitation: (a) labor compliance standards are met in accordance with the provisions of the "Davis-Bacon and Related Acts" established in 29 CFR Parts 1, 3 and 5, and (b) wages of the contractors' employees are not less than those contained in the wage determination established by the U.S. Department of Labor. Additionally, the Authority shall be obligated to monitor said CDA developer to ensure, to the extent otherwise required by law, compliance with (x) the anti-kickback regulations established in 29 CFR Part 3; (y) the provisions of Title VI of the Civil Rights Act of 1964 codified in 49 CFR Part 21 and 23 CFR Part 710.405(b); and (z) the equal employment opportunity standards established in 41 CFR Part 60 provided that the Authority shall not be liable for violations of the foregoing laws, orders and regulations by the CDA developer. The Authority shall cause the CDA developer to make available to the governmental agencies responsible for enforcement of the above-referenced laws, orders and regulations, all documentation and records necessary to review and audit the various requirements established under this Paragraph 9. To the extent otherwise required by law, the Authority's construction contract(s) shall include the provisions required by FHWA Form 1273, Required Contract Provisions, together with the applicable provisions of the Clean Air Act and Clean Water Act codified in 42 USC 1368, et seq., including but not limited to the certification of the National Pollution Discharge Elimination System permits established under Section 402 of the Clean Water Act. Compliance with these provisions shall be the responsibility of the Authority for all contracts let by the Authority subsequent to the effective date of this Agreement. In addition, the Authority shall, to the extent required by law, be responsible for compliance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970. This Paragraph 9 shall operate and be construed solely as acknowledging and obligating the Authority to comply with the referenced Federal laws *only* to the extent that, and *only* for so long as, such compliance is otherwise required; if due to a change in the law or for any other reason any of the foregoing requirements are found to be inapplicable to the Authority and/or in connection with the 183-A Project, this Agreement shall be deemed modified automatically to delete said requirement(s). The Authority may rely on the legal opinion of its legal counsel in connection with any action taken or arising under this Agreement, provided that said opinion shall not bind TxDOT or the FHWA.

10. **Operation, Maintenance and Regulation of the 183-A Project/Interoperability.** Upon completion, those portions of the 183-A Project depicted on Exhibit B shall be operated, maintained, policed, and regulated by the Authority in compliance with the RMA Act and relevant provisions of any trust agreement(s) or similar documentation evidencing or securing the Financing,

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as hereinafter defined. The Authority shall negotiate and execute agreements with the applicable municipalities and counties delineating, in a manner consistent with the final set of plans and specifications, their respective maintenance, operation, regulation and policing obligations regarding the service roads and interchanges. The relative responsibility for such obligations shall be as depicted on Exhibit B.

11. **Toll System Interoperability.** Prior to deploying any toll collection equipment or technology the Authority shall confer with TxDOT to assure that all interoperability requirements are satisfied. TxDOT shall operate a CSC/VPC, which shall be utilized by the Authority on terms and conditions agreeable to both.

12. **Maintenance of Records.** All records and documents prepared by the Authority under this Agreement must be made available to authorized representatives of TxDOT and the FHWA during normal work hours. All records and documents prepared under this Agreement must be maintained by the Authority for three (3) years after final payment of construction costs incurred in connection with US 183-A. Notwithstanding the foregoing, the Authority shall comply with all Federal laws pertaining to the retention of records and the provision of access thereto.

13. **Reports and Plans to TxDOT.** The Authority shall deliver to TxDOT progress reports for the 183-A Project prepared by the Authority's general engineering consultant. At the earliest possible date following completion of construction of any section of the 183-A Project, the Authority will deliver to TxDOT the final set of plans and specifications for said section, which shall clearly identify the limits and items to be maintained by the Authority, TxDOT, and the applicable municipality or county, respectively, pursuant to the terms and conditions of this Agreement and the RMA Act.

14. **The Financing.** The Authority intends to finance the design and construction of the 183-A Project in part with proceeds from the issuance and sale of one or more series of revenue bonds (the "Financing"). All of the Authority's obligations regarding the design and construction of the 183-A Project are contingent and conditioned upon the successful issuance and sale of said revenue bonds and the Authority's receipt of the proceeds from the Financing. TxDOT shall have no rights or obligations regarding the provision of the Financing, provided, however, that if reasonably requested by the Authority, TxDOT shall promptly cooperate with and fully assist the Authority by providing assurances or other information necessary or desirable for obtaining the Financing, provided that said assurances and/or information are, in TxDOT's reasonable judgment, consistent with the provisions of this Agreement.

15. **The TIFIA Loan.** The Authority intends to secure additional financing for the 183-A Project in the form of a loan through the Transportation Infrastructure Finance and Innovation Act ("TIFIA") as administered by the US Department of Transportation. Such loan is anticipated to be in the amount of approximately \$66,000,000.00 ("the "TIFIA Loan"). Absent any agreement to the contrary, TxDOT shall have no obligation or liability with respect to the TIFIA Loan, provided, however, that if reasonably requested by the Authority, TxDOT shall

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promptly cooperate with and fully assist the Authority by providing assurances or other forms of information necessary or desirable for obtaining the TIFIA Loan, provided that said assurances are, in TxDOT's reasonable judgment, consistent with the provisions of this Agreement.

16. **Termination of this Agreement.** This Agreement may be terminated upon the occurrence of either of the following conditions:

- (a) By written mutual agreement and consent of the parties hereto; or
- (b) By satisfactory completion of all responsibilities and obligations described herein.

17. **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.

18. **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. Pursuant to the provisions of 31 USC 1352, the Authority shall complete the "Disclosure of Lobbying Activities", attached hereto as Exhibit D and made a part hereof for all purposes.

19. **Federal Debarment Requirements.** Pursuant to the provisions of 49 CFR Part 29, the Authority shall require its CDA developer to complete the "Debarment Certification", attached hereto as Exhibit E and made a part hereof for all purposes. All subcontractors to the CDA developer must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Exhibit F and made a part hereof for all purposes.

20. **Circulation of the Agreement.** Copies of this Agreement will be provided to, reviewed and relied upon by underwriters, investment bankers, brokerage firms, bond counsel, and similar parties in connection with the provision of the Financing and the TIFIA Loan.

21. **Reimbursement.** The Commission has found that the transfer of Section 9 to the Authority pursuant to this Agreement will result in substantial net benefits to the State, TxDOT, and the traveling public that exceed the cost to TxDOT and other parties, said cost to include the cost and/or dollar value of the various interests, property and rights conveyed, assigned and/or transferred under this Agreement. Consequently, no reimbursement or compensation shall be required of the Authority in connection with said transfer or this Agreement.

22. **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,

For Discussion Purposes Only

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.

23. **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.

24. **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:

Central Texas Regional Mobility Authority
13640 Briarwick Drive, Suite 200
Austin, TX 78729
Attention: Executive Director

Texas Department of Transportation
Austin District Office
P.O. Drawer 15426
Austin, Texas 78761
Attention: District Engineer

with a copy to:

Locke Liddell & Sapp LLP
100 Congress Avenue, Suite 300
Austin, Texas 78701
Attention: C. Brian Cassidy

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.

25. **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.

26. **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.

27. **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.

28. **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 except for the approval thereof by the Governor (the required public hearing pertaining to the transfer having been completed), 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 has obtained, or 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.

29. **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.

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12/29/04

For Discussion Purposes Only

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by six (6) multiple counterparts on the dates shown hereinbelow, effective on the date listed above.

**CENTRAL TEXAS REGIONAL
MOBILITY AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Robert E. Tesch, Chairman

By: _____
Mike Behrens, Executive Director

Date: _____

Date: _____

Approved As To Form:

Locke Liddell & Sapp LLP
General Counsel

Recommended for approval:

By: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

Map Depicting 183-A Project

EXHIBIT B

Description of the Section 9 Property Interests

EXHIBIT C

Materials Testing Contract

EXHIBIT D

Certification for Federal-Aid Contracts

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making

or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require the language of this certification to be included in all lower tier subcontracts which exceed \$100,000, and that all such recipients shall certify and disclose accordingly.

Signature of Certifying Official

Typed Name

Title

Date

EXHIBIT E

- (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

Form 1734-A

4-89

EXHIBIT F

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

See Reverse for Information

Form 1734-A

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