

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

RESOLUTION NO. 12-083

**AUTHORIZING EXECUTION OF THE PROJECT DEVELOPMENT
AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION
FOR THE MOPAC IMPROVEMENT PROJECT.**

WHEREAS, the MoPac Improvement Project is an 11.2 mile project to add one express, variable-priced tolled lane in each direction on Loop 1 between FM 734 (Parmer Lane) and Cesar Chavez Street (the "Project"), with financial assistance provided by the Texas Department of Transportation ("TxDOT") pursuant to a financial assistance agreement with the Mobility Authority dated and effective on September 13, 2012; and

WHEREAS, before beginning construction of the Project the financial assistance agreement obligates the Mobility Authority and the Texas Department of Transportation ("TxDOT") to enter into an agreement to establish terms and conditions for the development, design, construction, operation, and maintenance of the Project (the "PDA"), the current draft of which is attached as Exhibit 1 to this resolution; and

WHEREAS, the Executive Director recommends approval of the proposed PDA in the form or substantially in the form attached as Exhibit 1, subject to the completion of negotiations with TxDOT.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves the "Project Development, Operation, and Maintenance Agreement Loop 1 Express Lanes ('MoPac Improvement Project')" in the form or substantially in the form attached as Exhibit 1, and authorizes the Executive Director to finalize and execute the PDA in the form or substantially in the form consistent with Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 5th day of December, 2012.

Submitted and reviewed by:



Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 12-083
Date Passed: 12/05/12

Exhibit 1

Draft

Project Development, Operation, and Maintenance Agreement
Loop 1 Express Lanes (“MoPac Improvement Project”)

(on the following 23 pages)

**PROJECT DEVELOPMENT, OPERATION, AND
MAINTENANCE AGREEMENT
LOOP 1 EXPRESS LANES
("MOPAC IMPROVEMENT PROJECT")**

**MOPAC IMPROVEMENT 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 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 _____, 2012 (the “Effective Date”).

WITNESSETH

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

WHEREAS, in Minute Order No. 109052 adopted by the Commission on October 31, 2002, the Commission 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 §26.11 *et seq.* (the “RMA Rules”), as well as its own policies and procedures; and

WHEREAS, the Authority is charged with funding and developing transportation projects throughout the region to provide innovative transportation solutions, promote economic development, and improve the quality of life for residents of the region; and

WHEREAS, TxDOT and the Authority have been cooperatively developing the MoPac Improvement Project (the “Project”), an 11.2 mile project to add one express, variable-priced tolled lane in each direction on Loop 1 between FM 734 (Parmer Lane) and Cesar Chavez Street. The Project will include widening of general purpose lanes on the outside, reconstruction of the non-tolled lanes, sound walls and grade separated ramps providing access to and from downtown Austin. The tolled lanes will be located in the median of the corridor separated from the existing general purpose lanes by a buffer zone, as is more fully described and depicted on Exhibit “A”; and

WHEREAS, in Minute Order No. _____ adopted by the Commission on _____, 20__, the Commission designated the addition of one express, variable-priced tolled lane in each direction on Loop 1 between FM 734 (Parmer Lane) and Cesar Chavez Street as a toll project on the state highway system pursuant to Section 228.051 of the Texas

Transportation Code; and

WHEREAS, a formal waiver of development of a market valuation for the Project pursuant to former Transportation Code Section 228.0111(f-1) (repealed, effective June 17, 2011) was implemented by execution of a market valuation waiver agreement between TxDOT and the Authority dated September 13, 2010, and

WHEREAS, pursuant to Section 228.011(g) (since repealed) the Authority submitted terms and conditions for the development, construction, and operation of the project to the Capital Area Metropolitan Planning Organization (the "CAMPO") for its consideration; and

WHEREAS, the terms and conditions were approved by CAMPO on _____, 2010, enabling the Authority to formally consider its option to develop the Project as provided by Section 228.0111(g); and

WHEREAS, on September 29, 2010 the Authority took appropriate action as required by Section 228.0111(g) and exercised the first option to develop, finance, construct, and operate the Project as a express lane toll project under the terms and conditions approved by the CAMPO; and

WHEREAS, in Minute Order No. _____ dated _____, 2010, the Commission authorized the Authority to make improvements to the state highway system in connection with a project in the Loop 1 corridor, and authorized the Executive Director to enter into a project development agreement with the Authority; and

WHEREAS, on or about July 3, 2012, the Authority submitted a request, pursuant to 43 TEX. ADMIN. CODE Sec. 27.50, et seq (the "Toll Equity Rules"), for financial assistance in the amount of \$197.6 million to fund the costs of developing the Project, including without limitation the costs of public involvement, final design, utility relocation, construction, general engineering support, legal support, and project oversight; and

WHEREAS, on July 26, 2012, and August 30, 2012, the Commission, pursuant to its constitutional and statutory authority and the Toll Equity Rules, gave preliminary and final approval of the grant by TxDOT of financial assistance in the amount of \$197.6 million, and in Minute Order 113252 authorized the Executive Director of TxDOT to enter into a financial assistance agreement with the Authority; and

WHEREAS, on September 13, 2012, TxDOT and the Authority executed a financial assistance agreement for \$197.6 million in Project funding; and

WHEREAS, this Agreement is necessary and desirable to clarify the relationships between TxDOT and the Authority in connection with the development, design, construction, operation and maintenance of the Project.

AGREEMENT

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, acquisition, construction, operation and maintenance by the Authority of the Project as a transportation project pursuant to the RMA Act. Without limiting the provisions of this Agreement, TxDOT and the Commission will take all actions reasonably requested by the Authority which are consistent with this Agreement and in furtherance of the purposes of this Agreement and which are consistent with applicable law. Unless and until the Authority elects to abandon its efforts to develop, construct and operate the Project or such time periods within which the Authority must pursue the Project, as required by law, lapse, TxDOT shall not advance any alternative to or conflicting proposal for the development of the Project. Further, in its consideration of any work that might affect the Project, TxDOT shall use best efforts to minimize or avoid any adverse impact on the Project or its operations.

Nothing contained in the previous paragraph or elsewhere in this Agreement in any manner constrains the ability of TxDOT or any other Party to construct, operate, permit, or support (a) any work or improvements on highway projects necessary for improved safety, maintenance or operational purposes, (b) any rail project, (c) any HOV lanes required by environmental regulatory agencies, or (d) any highway projects or portions of a highway project included in any of the following transportation plans and programs:

- (i) 2010 - 2013 Statewide Transportation Improvement Program (STIP);
- (ii) 2011 Unified Transportation Program (UTP);
- (iii) The Metropolitan Transportation Plan 2035 adopted by CAMPO; or
- (iv) any future transportation plan or program adopted by CAMPO or a successor agency.

2. **Use of Right-of-Way.** During such time that the Authority or any contractor working on the Authority's behalf is developing, constructing, operating, maintaining, and regulating the Project, it shall have a right to use and occupy TxDOT owned property within the Loop 1 corridor as is depicted on Exhibit "A" attached hereto as necessary and in accordance with applicable law.

The Authority shall have, and TxDOT hereby grants to the Authority, a license and right of entry on, over, and under such area and right-of-way owned by, subsequently acquired, and otherwise under TxDOT's control and as necessary to enable the Authority to cause the Project to be constructed, maintained, and operated. Such license and right of entry shall remain in effect unless and until responsibility for construction, maintenance, or operation of the Project reverts to TxDOT or is otherwise acquired and assumed by TxDOT with the consent of the Authority or pursuant to applicable law, provided that the contractual requirements for provision of maintenance set forth herein shall not be deemed as the reversion to, or acquisition or assumption by, TxDOT of construction, operation, or maintenance responsibility for purposes of this paragraph. Additionally, TxDOT grants to the Authority a license and right of entry on, over,

and under such area and right-of-way owned by, subsequently acquired, and otherwise under TxDOT's control and as necessary to enable the Authority to cause the express lanes to be operated, maintained, policed, and regulated. Such license and rights of entry relating to the aforementioned activities shall be deemed granted upon execution of this Agreement and shall remain in effect unless and until operation and maintenance of the express lanes is otherwise permanently acquired and assumed by TxDOT with the consent of the Authority or pursuant to applicable law. The right-of-way comprising the Loop 1 corridor and to which use is granted hereunder, subject to this Agreement, is all TxDOT Loop 1 mainlane, ramp, frontage road, and intersection ROW located within the Project limits depicted on Exhibit "A". In the event a third party requests evidence of authorization for the Authority to use TxDOT owned right-of-way pursuant to this Agreement, TxDOT agrees to execute a license, right-of-entry, easement, or other document in a form reasonably acceptable to TxDOT and which evidences the rights granted herein.

3. **Construction, Operation, Maintenance, and Regulation.** The Authority shall be responsible for construction of the Project. The Authority shall be responsible for maintenance of the Project and associated right-of-way from the commencement of construction activities until Final Acceptance of the Project, or until Incremental Acceptance of portions of the Project. For purposes of this Agreement, Final Acceptance shall mean all conditions for final acceptance as set forth in the Design/Build Contract to be entered into between the Authority and its Design/Build Contractor have been satisfied. "Incremental Acceptance" shall mean the mutual acceptance by the Authority and TxDOT of a substantial portion of the Project that is completed to Final Acceptance requirements prior to the Final Acceptance of the entire Project. In the case of Incremental Acceptance, TxDOT and the Authority shall assume relative responsibility for the maintenance of the incrementally accepted portions of the Project as provided for under this Agreement for the corresponding portion of the Project.

During construction activities, TxDOT shall remain responsible for incident management, snow and ice control, and operation of the Traffic Management System (TMS) (changeable message signs, lane control signals, cameras, etc.) for the entire Project.

The Authority will not be responsible for the repair or rehabilitation of existing bridges beyond \$50,000 per bridge if the Design/Build Contractor construction activities identify deficiencies beyond those identified under Design/Build Contractor's scope. If Design/Build Contractor uncovers out of scope items that need repair, including any hazardous materials remediation on existing bridges, the \$50,000 shall cover fixed costs and will not include analytical costs. TxDOT and the Authority shall determine and mutually agree upon the bid unit prices in the Design/Build Contractor's assessment of the \$50,000 per bridge.

Upon Substantial Completion of the Project, the Parties shall work cooperatively to determine appropriate signage, provided that the Authority shall have the right to install and maintain such signage as it reasonably deems necessary and in such locations (including within right-of-way of the non-tolled lanes) to maximize the safe and efficient operation of the express lanes and the toll collection system. The signage may be revised, relocated, or supplemented from time-to-time as the Authority deems necessary to assure safe operations or to enhance efficiency of the operations of the express lanes or the aesthetics of the corridor. For purposes of this Agreement, "Substantial Completion" as used herein shall mean satisfaction of the conditions for substantial completion as identified in the Design/Build Contract. Additionally, the Authority shall have the

right after Substantial Completion to complete any punchlist work in the right-of-way of the non-tolled lanes necessary to complete the Project.

Upon Final Acceptance of the Project, TxDOT and the Authority shall be jointly responsible for the cost of routine maintenance and renewal and replacement maintenance within the right-of-way of the Loop 1 corridor as limited by the Project limits. TxDOT and the Authority shall share costs for maintenance based on a percentage split of the incurred cost. The cost sharing split will be 25% Authority and 75% TxDOT as generally outlined in "Exhibit "E". The parties shall mutually agree on which of them shall procure the necessary maintenance services and oversee the contractor(s) providing such services, and shall jointly develop the maintenance standards and performance metrics that shall be adhered to by the contractor(s). In the event the non-procuring party believes that there is a failure to adequately perform the required maintenance, that party shall notify the other and the two parties will work together to compel adequate performance by the contractor(s). TxDOT and the Authority shall review the Exhibit E costs and other aspects of the maintenance obligations subject to the shared cost arrangement on an annual basis, and shall revise Exhibit E and/or the cost sharing split if mutually agreed to by both parties.

In the event either party declines to extend the cost sharing arrangement described above for any reason, the Authority will assume the obligation for maintenance of the express lanes and TxDOT will assume the obligation to maintain the remaining right-of-way and infrastructure within the Loop 1 corridor.

TxDOT currently has agreements with the City of Austin for maintenance of continuous illumination, sidewalks, and shared use paths. These agreements shall remain in effect and will cover applicable facilities that are constructed contemporaneous with the Project.

The Authority shall be responsible for the operation and regulation of the express lanes in compliance with applicable law and relevant provisions of any trust agreement(s) or similar documentation evidencing or securing financing, if any. The Authority shall be responsible for operation and maintenance of all the tolling equipment and tolling infrastructure required for operation of the express lanes. The Authority may delegate any of its obligations in connection with the Project to any other third party, including without limitation a Design/Build Contractor or a toll systems integrator, provided that the Authority shall retain ultimate responsibility for the proper operation, and regulation of the express lanes.

The Parties shall work together to coordinate maintenance activities (whether performed by a contractor or by TxDOT or the Authority) on the portions of the Project that each will operate so as to minimize disruptions to service and negative impacts to toll operations. The Parties mutually agree to notify and obtain approval from the other Party in advance of lane closures or blockage of the other Party's facility. Activities on the non-toll lanes and ramps that limit access to the express lanes may have an impact on the operations and revenue generation of the facility, particularly during peak hours. TxDOT shall coordinate with the Authority to minimize such impacts and shall only allow or perform closures and associated work during off-peak hours, except in the event of an emergency which poses a threat to the safety of the traveling public.

4. **Utility Relocations.** There will be utility relocations required for the Project. Utility relocations shall be the responsibility of the Authority. The Authority shall ensure that all Utility relocations are performed in accordance with applicable State laws, regulations, rules, policies,

and procedures. This includes without limitation 43 TEX. ADMIN. CODE §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities, and 43 TEX. ADMIN. CODE §21.31 et seq. relating to Utility Accommodation. TxDOT acknowledges that utility relocation activities may be undertaken on the Authority's behalf by its Design/Build Contractor, in which case the Authority shall be responsible for ensuring that such contractor carries out all such relocation activities in a manner consistent with applicable laws and administrative regulations. The Authority shall pay, or cause to be paid, utility owners pursuant to Section 370.170 of the RMA Act. TxDOT will cooperate with the Authority in securing the performance of all necessary utility relocations.

5. **Construction Obligations of the Authority; Control of Work.** The Authority shall be responsible for the final design and construction of the Project, including: (a) ensuring that all environmental permits, issues, and commitments are adhered to in the Project design; (b) addressing field changes for potential environmental impacts and obtaining any necessary environmental permits, issues, and commitments for such field changes; (c) ensuring that all construction plans are signed, sealed and dated by a professional engineer licensed in the State of Texas; and (d) carrying out required utility relocation and/or adjustments, if any, pursuant to Section 4. Except as hereinafter provided, the Authority shall have sole authority and responsibility for: (a) the final design of the 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, a design/build contractor, contractors, subcontractors, vendors, sureties, toll system integrator and other parties retained in connection with the financing, design, construction, or operation of the 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 performed under a contract let by the Authority; (e) the negotiation, bidding, and letting of contracts; and (f) managing the operation, and toll collection requirements for the Project.

The Authority shall be responsible for adhering to all applicable Federal Highway Administration ("FHWA") and TxDOT rules, regulations, policies, procedures, and standards for the design and construction of the Project, except as specifically stated in this Agreement. The Authority must obtain the approval of the Commission as required by Section 370.187 of the Texas Transportation Code before construction of the Project begins, in accordance with the requirements of 43 TEX. ADMIN. CODE §§11.58 and 26.31

Plans and specifications developed by the Authority for the Project must be in compliance with either the latest version of the TxDOT 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). For purposes of this section, the latest version of the design manuals and AASHTO standards are those in effect on the date of issuance of the request for detailed proposals for the design and construction of the Project as updated by all non-discriminatory changes made subsequent to that date.

The Authority may request exceptions to the design standards pursuant to 43 TEX. ADMIN. CODE § 27.56(b)(2). The Executive Director of TxDOT or their designee and FHWA may provide written approval of 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. Requests for design exceptions involving the structural capacity or bridge width shall be sent in writing to the Executive Director of TxDOT or their designee for review and approval.

Construction plans and specifications for the 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 or designee 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.

The Authority, its Design/Build Contractor, and TxDOT will hold an initial "scoping session" before start of the design activity and a formal review at the end of the Preliminary and Final Design. Preliminary and Final Design is defined as described in 43 TEX. ADMIN. CODE § 27.56(c). During the Preliminary and Final Design phases, TxDOT personnel will participate and provide comments on the design work with FHWA oversight. The Authority and TxDOT personnel will attend progress meetings, working meetings, design workshops, and conduct over-the-shoulder reviews throughout the design process. It is the intent of the over-the-shoulder reviews to check for basic concept-level detail, design criteria, and fatal flaws. These reviews will not include detailed calculation or drawing reviews. The Design/Build Contractor shall be fully responsible for all aspects of design quality control (DQC) and design quality assurance (DQA) procedures and shall ensure quality by complying with the approved Design Quality Management Plan (DQMP). All submittals (e.g. plans, specifications, calculations, reports, etc.) shall be subject to review and acceptance by the Authority; with review and concurrence by TxDOT.

When a Preliminary or Final Design package is received, and after each design package has been reviewed by the Authority for completeness, the Authority shall submit to the Executive Director of TxDOT or their designee the information identified in 43 TEX. ADMIN. CODE § 27.56(c)(2). The Authority and TxDOT shall conduct reviews of each design submittal concurrently. The Design/Build Contractor shall verify that all quality processes are in compliance with the DQMP by certifying that each design package has been prepared in accordance with the DQMP. The Authority shall formally transmit to the Executive Director of TxDOT or their designee a signed and dated certification from the Design/Build Contractor that the design package is complete and meets contract requirements.

TxDOT will review and provide to the Authority comments on each design package for inclusion in one set of design review comments to be sent to the Design/Build Contractor. TxDOT shall complete its review and the Executive Director of TxDOT or their designee shall notify the Authority in writing of its concurrence of the design within ten (10) business days, excluding state and federal holidays, of receipt thereof. If rejected, a resubmittal of the design package shall be required for TxDOT concurrence. Resubmittal of any design package will afford TxDOT's review an additional ten (10) business days, excluding state and federal holidays, of receipt thereof. After TxDOT's review is complete, the Executive Director of TxDOT or their designee shall submit the design package for FHWA review and concurrence. If no notification of concurrence within the 10-day review periods is given by the TxDOT or FHWA engineer, the Authority may proceed with acceptance of the design. The Authority will have two (2) business days to review TxDOT and FHWA comments and incorporate into a unified Review Comment

Summary and Resolution (RCSR) form. If conflicts or need for clarifications are identified, the Authority and TxDOT will conduct a comment concurrence meeting. After concurrence the Authority will forward comments to the Design/Build Contractor within fifteen (15) business days of receipt of a complete Preliminary or Final Design submittal package.

The Design/Build Contractor will have an opportunity to correct or submit additional information to cure any defects or deviations identified by the Authority and TxDOT. Each comment provided by the Authority and TxDOT will be required to be addressed and a response formulated by the Design/Build Contractor.

The Design/Build Contractor shall provide advance notice to the Authority and TxDOT a minimum of ten (10) business days prior to submitting a Preliminary or Final Design package. If the package is not received on the date indicated in the advance notice, the Authority and TxDOT shall retain the right to extend their review period by one (1) business day for every business day the package was submitted either earlier or later than the date indicated in the advance notice. State and federal holidays shall not be considered business days.

Before the start of the 30% design activity, the Authority shall cause its Design/Build Contractor to schedule design workshops to discuss specialized items (at a minimum for retaining walls, sound walls, bridges, and pavement) on the Project. TxDOT shall participate and provide the Design/Build Contractor and/or its designers Project-specific guidance to assist in the design development.

After 30% review but prior to commencement of construction of any portion of the Project, the Authority shall review early release or release for construction designs, plans, and specifications prepared by its Design/Build Contractor. The Authority shall cause its Design/Build Contractor to make changes to said designs, plans, and specifications as necessary to comply with the design criteria prescribed in this Agreement. Upon approval by the Authority of the early release or release for construction designs, plans, and specifications, the Authority shall have the right to begin or cause its Design/Build Contractor to begin construction of the Project.

When final plans for each design package are complete, and after each design package has been reviewed by the Authority for completeness, the Authority shall submit, or shall cause its Design/Build Contractor to submit, to the Executive Director of TxDOT or designee the information identified in 43 TEX. ADMIN. CODE § 27.56(c)(4). The Design/Build Contractor shall certify that Authority and TxDOT comments from the Preliminary design submittals have been addressed and/or incorporated into the Final design package. The Authority shall formally transmit to the Executive Director of TxDOT or his designee a signed and dated certification from the Design/Build Contractor that the deliverable is complete and meets contract requirements.

The Authority is responsible for establishing and maintaining a system of internal audits. TxDOT and the Authority shall use quality audit results as a tool to review and implement continuous improvement to the DQMP and design activities.

The Authority shall ensure that the plans for and the construction of the Project are in compliance with the Texas Accessibility Standards issued by the Texas Department of Licensing

and Regulation and with the Americans with Disability Act Accessibility Guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board.

All revisions to the Design/Build Contract for the Project, if any, shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to TxDOT for its records. Any revision that affects prior environmental approvals or significantly revises the Project scope or the geometric design must be submitted to the Executive Director of TxDOT or their designee for approval prior to beginning the revised construction work. The Authority shall submit, or shall cause its Design/Build Contractor to submit to the Executive Director of TxDOT or their designee all proposed contract revisions that are subject to TxDOT approval. TxDOT will review the proposed revision and will forward the proposed revision and comments to the Executive Director of TxDOT or their designee. TxDOT shall complete its review and the Executive Director of TxDOT or their designee shall notify the Authority of their approval or disapproval of the contract revision within twenty (20) business days, excluding state and federal holidays. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such twenty (20) day period. If no notification is given, the information will be deemed approved. The Authority 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 within five (5) business days, excluding state and federal holidays. If no response is given by TxDOT, the information will be deemed approved.

Construction oversight and inspection, and materials testing and inspection shall be the responsibility of the Authority. The Authority shall use all reasonable efforts to achieve substantial completion of the Project by December 31, 2017. As provided in Section 13 of this Agreement, the Authority will provide to TxDOT a set of final construction plans, signed, sealed and dated by a professional engineer, licensed in the State of Texas, certifying that the project was constructed in accordance with the approved plans and specifications and approved contract revisions.

6. Responsibility for Design. The Authority acknowledges, and fully accepts, its responsibility for, the design and construction of the Project, and the Authority further acknowledges and fully accepts responsibility for the regulation, signage, and overall operation of the express lanes 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.

7. Environmental Permits and Compliance. Environmental clearance was obtained for the Project on August 23, 2012. The Authority shall be responsible for compliance with applicable requirements of state and federal law regarding environmental permits, issues, and commitments (EPIC) during construction. This shall include, without limitation, full compliance with the approved Environmental Documents (which includes the Environmental Assessment and the Finding of No Significant Impact) 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, to the extent

permitted by law, hereby commits to transfer and assign to the Authority all rights and delegate all obligations granted under the approved Environmental Documents for the Project, as well as any claims or causes of action for errors or omissions committed in the environmental review process. In the event that changes are made to the scope of the Project which require a re-evaluation of (or supplement to) the approved Environmental Documents, the cost of such work shall be borne by TxDOT if it requests the change in scope and by the Authority if it requests the change in scope.

8. **Contracting Procedures.** Pursuant to Texas Transportation Code Section 370.401, et. seq., the Authority is developing the Project through the Design/Build Method (as defined in Texas Transportation Code Chapter 370, Subchapter K). TxDOT and FHWA representatives have had, and will continue to have, the opportunity to observe the design/build procurement process for purposes of confirming compliance with applicable laws and regulations and to participate 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 design/build procurement process. The Authority shall ensure compliance by its selected design/build contractor with the applicable provisions of this Agreement.

9. **HUB Policy; DBE Guidelines.** The Authority shall require its Design/Build Contractor to comply with the Authority's Business Opportunity Policy (the "Policy") as set forth in the Authority's Resolution No.03-60, as may be amended. Additionally, the Authority shall require its Design/Build Contractor to comply with the applicable DBE guidelines and regulations established in 49 CFR Part 26, 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 to TxDOT quarterly reports regarding compliance with this paragraph.

10. **Compliance With Applicable Laws.** It is the Authority's obligation to monitor its Design/Build Contractor to ensure the Design/Build Contractor prosecutes its scope of work in 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 Design/Build Contractors' employees are not less than those contained in the wage determination established by the U.S. Department of Labor. Additionally, the Authority shall monitor its Design/Build Contractor to ensure 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 Design/Build Contractor. The Authority shall cause its Design/Build Contractor 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 Section 10. To the extent required by law, the Authority's construction contract(s) and/or design-build 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 Section 10 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 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, 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.

11. **Toll System Interoperability.** Prior to deploying any toll collection equipment or technology the Authority (or its contractor) shall certify to TxDOT that the technology complies with any statewide interoperability standards adopted by TxDOT and with the requirements of any interoperability agreements between TxDOT and the Authority.

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 the Project. Additionally, TxDOT, the FHWA, and their duly authorized representatives shall have access to all governmental records 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 Federal laws pertaining to the retention of records and the provision of access thereto. 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 TxDOT with a copy of any audit of those books and records. The Authority shall comply with the audit requirements and other requirements relating to project records in 43 Tex. Admin. Code §27.55(b), including having a full audit of its books and records performed annually in accordance with the standards of OMB Circular No. A-133. 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.

13. **Reports and Plans.** The Authority shall deliver to TxDOT quarterly progress reports for the Project prepared by the Authority's general engineering consultant. Within six (6) months after Final Acceptance of the Project, the Authority will deliver to TxDOT the final record drawings and documents, pursuant to the terms and conditions of this Agreement.

14. **The Financing.** Funding for design and construction of the project is primarily in the form of TxDOT grants to the Authority totaling \$197.6 million for which distribution shall be governed by the terms and conditions of the Financial Assistance Agreement (FAA). Also, the Authority has entered into an interlocal agreement with CAMPO in which the Authority has agreed to establish a Regional Infrastructure Fund (RIF) and to deposit surplus revenues of the Project in the RIF, to be used to fund other eligible transportation projects in the region. Absent any agreement to the contrary, TxDOT shall have no obligation or liability with respect to the interlocal agreement, provided, however, that if reasonably requested by the Authority, TxDOT shall promptly provide to the Authority assurances and/or other forms of information necessary

or desirable for implementation of the interlocal agreement, provided that said assurances are, in TxDOT's reasonable judgment, consistent with the provisions of this Agreement.

15. **Additional Financing.** The Authority may pursue additional financing for the Project in the form of a loan, bond issuance, or other debt instrument(s). Absent any agreement to the contrary, TxDOT shall have no obligation or liability with respect to such financing, provided, however, that if reasonably requested by the Authority, TxDOT shall promptly provide assurances and/or other forms of information necessary or desirable for obtaining the financing, provided that said assurances are, in TxDOT's reasonable judgment, consistent with the provisions of this Agreement and, if applicable, consistent with accepted practice in the municipal finance industry.

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;
- (b) By either Party hereto, upon the failure of the other Party to fulfill the obligations as set forth in this Agreement, provided that the Parties must have first followed the procedures set forth in Section 17 below; or
- (c) By satisfactory completion of all responsibilities and obligations described herein.

Notwithstanding the termination of this Agreement as provided for above, the rights and obligations granted under Section 2 shall survive termination of this Agreement and shall only terminate as provided for in Section 2.

17. **Dispute Resolution.** The Authority and TxDOT will set up a formalized process to resolve any issues that arise in connection with this Agreement. The process will include an issues resolution ladder to resolve questions at the appropriate organizational levels of each Party. Any issues that cannot be resolved by use of the issues resolution ladder will be referred to the Authority's Executive Director or designee and TxDOT's Executive Director or their designee to resolve. If a dispute is processed under the issues resolution ladder and not resolved, the Parties agree to use the procedures in the following sentences. The Party making a claim may advance it in accordance with the statutes and administrative rules applicable on the Effective Date, including all statutory provisions that effect a waiver, in whole or part, of sovereign immunity to suit for the purpose of adjudicating a claim for a breach under this Agreement. The parties agree to use any alternative dispute resolution procedure that is a part of the applicable claim procedure. The Parties shall satisfy the requirement for alternative dispute resolution by participating in non-binding arbitration, unless otherwise agreed to by the Parties. During the resolution of an issue the Authority and TxDOT will not hinder work under the Agreement and such work will proceed.

18. **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 TxDOT or 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.

19. 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 "Certification for Federal-Aid Contracts", attached hereto as Exhibit "B" and made a part hereof for all purposes.

20. Debarment Requirements. The Authority shall require its Design/Build Contractor to complete the "Debarment Certification", attached hereto as Exhibit "C" and made a part hereof for all purposes. All subcontractors to the Authority's Design/Build Contractor must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Exhibit "D" and made a part hereof for all purposes.

21. 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 any additional financing and the RIF.

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, 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:

Texas Department of Transportation
Austin District Office
7901 N. IH 35
Austin, Texas 78753
Attention: District Engineer

Central Texas Regional Mobility Authority
301 Congress Avenue, Suite 650
Austin, Texas 78701
Attention: Executive Director

with copies to:

Texas Department of Transportation

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

Locke Lord 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. Gratuities. Any person who is doing business with or who may do business with TxDOT under this Agreement may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advance written approval of TxDOT's Executive Director.

26. Conflict of Interest. The Authority shall not assign an employee to the Project if the employee:

- (a) owns an interest in or is an officer or employee of a business entity that has or may have a contract with TxDOT relating to the Project;
- (b) has a direct or indirect financial interest in the outcome of the Project;
- (c) has performed services regarding the subject matter of the Project for an entity that has a direct or indirect financial interest in the outcome of the Project or that has or may have a contract with TxDOT; or
- (d) is a current part-time or full time employee of TxDOT.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complimentary to the terms of the agreements under which TxDOT is providing financial assistance to the Authority to fund certain costs of the Project (the "Financial Assistance Agreements"), but in the event of conflict the terms of the Financial Assistance Agreements shall control.

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by three (3) multiple counterparts on the dates shown herein below, effective on the date listed above.

**CENTRAL TEXAS
REGIONAL MOBILITY AUTHORITY**

By: _____
Mike Heiligenstein, Executive Director

Date: _____

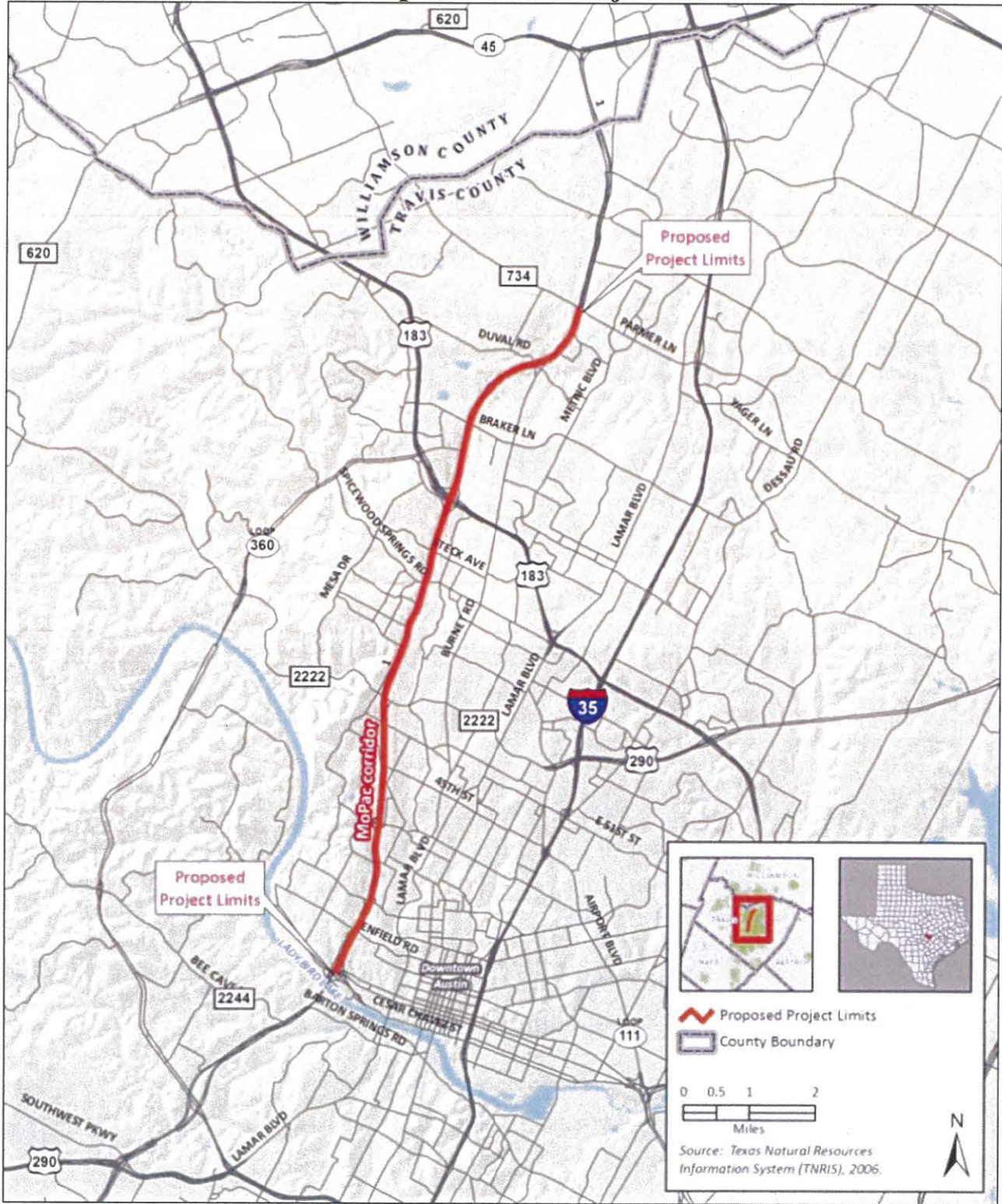
**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Phil Wilson, Executive Director

Date: _____

ATTACHMENT A

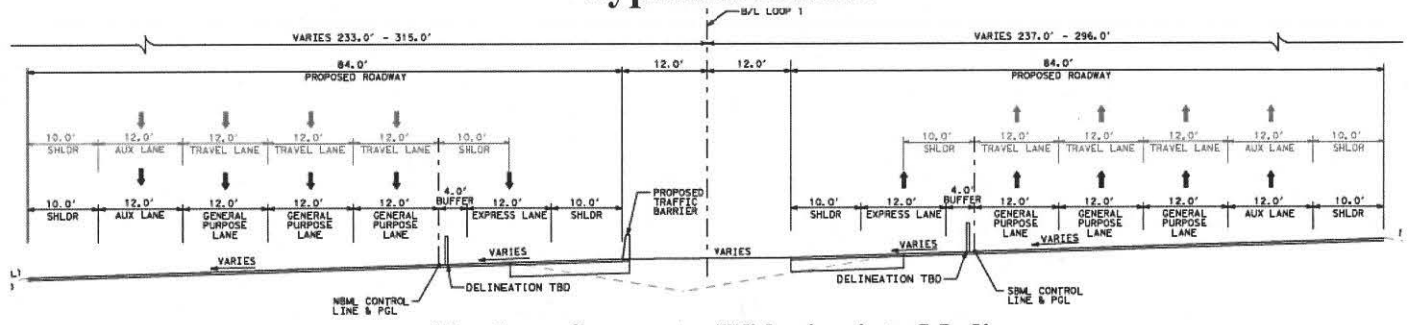
MoPac Improvement Project Limits



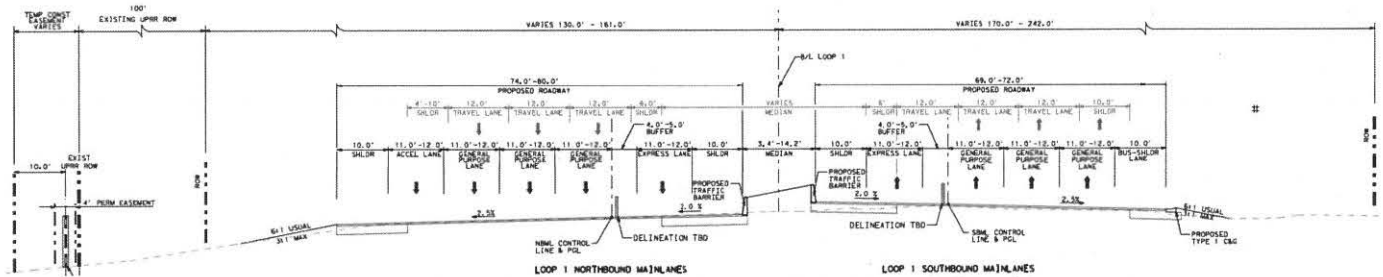
MoPac Improvement Project

The Project is approximately 11.2-miles in length and the limits are from just north of Parmer Lane (FM 734) southerly to Cesar Chavez Street. The Project includes tolled express lanes (one lane in each direction) constructed along the inside median of the existing Loop 1 facility by widening pavement and bridges and, in some areas, reducing the width of the existing lanes and shoulders. The Project includes tolling and ITS facilities, bike and pedestrian improvements, and grade separated ramp access to Cesar Chavez. The Project will require construction of several miles of sound walls within the Loop 1 right-of-way and within the Great Northern roadway right-of-way. There is an existing rail line located within the median of a significant portion of Project corridor. The Project will be dynamically priced utilizing an all-electronic toll collection system.

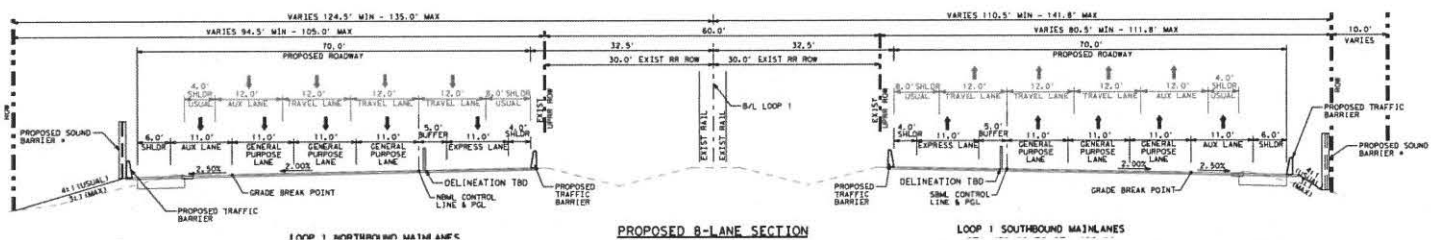
Typical Sections



Northern Segment – Widening into Median



Central Segment – Widening to Median and Outside



Southern Segment- UPRR in Center of ROW – Widening to Outside with Sound Walls

EXHIBIT "B"

Certification Regarding Use of Contract Funds for Lobbying

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 "C"

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

Form 1734-A
4-89

EXHIBIT "D"

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

Form 1734-A
4-89