

**January 26, 2011 CTRMA BOARD OF DIRECTORS MEETING
Summary Sheet**

AGENDA ITEM # 6

Discussion and possible action on a project development agreement with TxDOT for the Manor Expressway

Department: Finance/Law

Associated Costs: None

Funding Source: None

Board Action Required: Yes

Description of Matter: The proposed Project Development, Operation, and Maintenance Agreement for the 290 East Toll Project (“Manor Expressway”) (the “290 PDA”) establishes terms and conditions of the CTRMA/TxDOT relationship for the development, design, construction, operation, and maintenance of the Manor Expressway. On Thursday, January 27, 2011, the Texas Transportation Commission is scheduled to consider authorizing the Executive Director of TxDOT to execute the 290 PDA with CTRMA (under their Agenda Item 11.e).

The proposed 290 PDA is recommended for board approval. The resolution for this agenda item authorizes the Executive Director of CTRMA to execute the proposed 290 PDA in the form as attached or as substantially similar.

Attached documentation for reference:

Draft Resolution and proposed Project Development Agreement

Contact for further information:

Andrew Martin, General Counsel

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

RESOLUTION NO. 11-___

**Approving a Project Development Agreement with the Texas
Department of Transportation for the Manor Expressway Project**

WHEREAS, the 290 East Toll Project is an approximately 6.2 mile toll project in Travis County under development by the Central Texas Regional Mobility Authority (the "Authority"); is located along the existing US 290 corridor, extending eastward from existing US 290 at the US 183 interchange to east of SH 130; and will include three tolled lanes and three nontolled frontage road lanes in each direction, and also including four direct connectors at the US 290/US 183 interchange already under construction using funding provided through the American Recovery and Reinvestment Act of 2009 (the "Project"); and

WHEREAS, at its meeting on January 27, 2011, the Texas Transportation Commission is scheduled to consider and may authorize execution by the Executive Director of the Texas Department of Transportation of a Project Development, Operation, and Maintenance Agreement for the 290 East Toll Project ("Manor Expressway") between TxDOT and the Central Texas Regional Mobility Authority (the "Manor Expressway PDA"), a copy of which is attached to this resolution as Attachment "A;" and

WHEREAS, the Manor Expressway PDA will establish the terms and conditions of the CTRMA/TxDOT relationship for development, design, construction, operation, and maintenance of the Project; and

WHEREAS, the CTRMA staff recommends approval of the proposed Manor Expressway PDA.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors approves the Manor Expressway PDA in the form or substantially in the form attached as Attachment "A," and authorizes its Executive Director to finalize and execute that document in the form or substantially in the form authorized by the Texas Transportation Commission.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 26th day of January, 2011.

Submitted and reviewed by:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 11-___
Date Passed: 1/26/11

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<u>Attachment “A”</u>	290 East Project Maps
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**PROJECT DEVELOPMENT, OPERATION, AND
MAINTENANCE AGREEMENT
290 EAST TOLL PROJECT
("MANOR EXPRESSWAY")**

**290 EAST TOLL 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," is executed to be effective this ____ day of _____, 2011 (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 §26.01 *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, the 290 East Toll Project is an approximately 6.2 mile toll project situated in Travis County and located along the existing US 290 corridor, extending eastward from existing US 290 at the US 183 interchange to east of SH 130, and will include three tolled lanes and three nontolled frontage road lanes in each direction (the "Project"); and

WHEREAS, the Authority is already constructing four direct connectors at the US 290/US 183 interchange, using funding provided through the American Recovery and Reinvestment Act of 2009; and

WHEREAS, in Minute Order No. _____ adopted by the Commission on _____, 200_, the Commission designated the construction of tolled lanes on 290 East as a toll project 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 Section 228.0111(f-l) of the Texas Transportation Code was implemented by execution of a market valuation waiver agreement between TxDOT and the Authority dated July 30, 2008; and

WHEREAS, under the terms of the market valuation waiver agreement, the Authority agreed to present certain policies related to the terms and conditions for the development, construction, and operation of a toll project to the Capital Area Metropolitan Planning Organization (the "MPO") for its consideration pursuant to Section 228.0111(g); and

WHEREAS, the terms and conditions were approved by the MPO on December 1, 2008, enabling the Authority to formally consider its option to develop the Project as provided by Section 228.0111(g); and

WHEREAS, in Resolution No. 08-62, dated December 17, 2008 the Authority took appropriate action as required by Section 228.0111(g) and exercised its option to develop, construct, and operate the Project under the terms and conditions approved by the MPO; and

WHEREAS, in Resolution No. 10-22, dated March 31, 2010, the Authority Board of Directors approved the issuance of a request for qualifications for the development of the Project through a design/build comprehensive development agreement ("Design/Build CDA"); and

WHEREAS, in Minute Order No. _____ dated _____, 201__, the Commission authorized the Executive Director to enter into a project development agreement with the CTRMA; 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.

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, acquisition, construction, operation and maintenance by the Authority of the Project as a turnpike 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 are consistent with applicable law. Unless and until the Authority elects to abandon its efforts to 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 any segment of the Project. Further, in its consideration of any project that might affect the Project, TxDOT shall make good faith efforts to minimize or avoid any material 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) 2008-2011 Statewide Transportation Improvement Program (STIP);
- (ii) 2010 Unified Transportation Program (UTP);
- (iii) CAMPO 2035 Regional Transportation Plan adopted by the Capital Area Metropolitan Planning Organization (CAMPO); or
- (iv) any future transportation plan or program adopted by CAMPO or a successor agency.

2. Transfer, Acquisition and Use of Right-of-Way. The Project will be developed in a manner that allows for the tolled mainlanes to be owned, operated and maintained by the Authority, and the non-tolled frontage roads, including the cross streets within the right-of-way, to be owned, operated and maintained by TxDOT. The Authority shall be responsible for acquiring the additional right-of-way necessary for the Project, and will do so in the name of the State of Texas or in the name of the Authority with provision for subsequent transfer to the State for the right-of-way to be used for the nontolled frontage roads.

It is the shared intent of TxDOT and the Authority that, after compliance with the applicable requirements of Subchapter D of Chapter 228 of the Texas Transportation Code (“Subchapter D”) and 43 TEX. ADMIN. CODE §§27.11-27.16, the Project’s main lanes and associated right-of-way shall be removed from the state highway system and transferred to the Authority as more specifically set forth in the following paragraph and pursuant to an agreement for the lease, sale, or conveyance of a toll project or system under Subchapter D (the “Transfer Agreement”). The frontage roads will not be transferred and shall remain on the state highway system.

Subject to (a) complete execution of the Transfer Agreement, (b) completion of the required public hearings, (c) approval by the Commission and (d) approval by the Governor, all fee interests, permanent and/or temporary easements, rights of entry, licenses, leases, personal property (if any) and other interests of any kind, whether now or hereafter acquired by purchase, condemnation, dedication or any other means by TxDOT (or otherwise held by TxDOT) for the purpose of constructing and operating the main lanes of the Project (the “Property Interests”) shall be removed from the state highway system and transferred by TxDOT to the Authority. To further evidence that transfer, one or more deed(s) without warranty shall be prepared and recorded, utilizing the legal descriptions attached to the applicable Minute Order, which legal descriptions shall be prepared by the Authority at its cost and expense and include any corrections reasonably determined by TxDOT and mutually agreed to by the parties. All costs of

recording shall be the responsibility of the Authority. The property interests are transferred “as is,” without warranty of title, and subject to all matters of record. The foregoing transfer of the property interests shall include all structures and improvements of any kind now or hereafter situated thereon, together with all stored materials, if any.

At such time as is mutually agreed to by the parties, but no later than _____, 20___, the Authority shall petition the Commission for approval of the transfer of the Property Interests pursuant to Subchapter D and 43 TEX. ADMIN. CODE §§27.11-27.16. TxDOT agrees to promptly take such actions as are reasonably required to secure approval of the transfer as soon as possible following the filing of the petition. [TxDOT shall recommend to the Commission that it waive repayment of any amounts otherwise owed under Section 228.153 of the Texas Transportation Code.] The Authority acknowledges that the Governor’s Office acts independently in determining whether such transfer petition should be approved, and that the time needed for such Governor’s Office review and approval after receipt of the transfer petition is beyond TxDOT’s control.

Prior to such time that any right-of-way for the Project, or any portion thereof, is transferred to the Authority, the Authority shall have, and TxDOT hereby grants to the Authority, a license and right of entry and possession 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. Such license and rights of entry and possession shall remain in effect unless and until responsibility for construction 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. Additionally, TxDOT grants to the Authority a license and right of entry and possession 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 operated, maintained, policed, and regulated. Such license and rights of entry and possession relating to the aforementioned activities shall be deemed granted upon commencement of construction activities by the Design/Build CDA Contractor and shall remain in effect unless and until operation and maintenance of the Project is otherwise acquired and assumed by TxDOT with the consent of the Authority or pursuant to applicable law. The right-of-way to which use is granted hereunder, subject to this Agreement, is generally the area upon which the tolled mainlanes are, or will be, located, as depicted on the map attached hereto as Attachment “A-1”. The license and rights of entry and possession for the area upon which the non-tolled lanes are located (as generally depicted on Attachment “A-2”) shall terminate upon substantial completion of the Project and assumption of operations and maintenance responsibility for the non-tolled lanes by TxDOT. For purposes of this Agreement, “substantial completion” means that a segment of roadway may be used for its intended purpose; no defects or incomplete work remains which would materially interfere with, or adversely affect, the use, safety, or operability of the roadway; the segment may be operated without damage to the Project or any property within or adjacent to the Project right-of-way; all necessary traffic control devices are installed and operational; the traffic lanes are striped; and all safety appurtenances necessary for safe operation are installed.

3. Maintenance and Operation. Upon substantial completion and conveyance from the Authority to TxDOT of any segment of the Project right-of-way utilized for the non-tolled lanes,

TxDOT shall assume all operations and maintenance obligations for the non-tolled lanes. The parties shall work cooperatively to determine appropriate signage, and illumination, provided that the Authority shall have the right, subject to approval by TxDOT, to install and maintain such signage and illumination as it reasonably deems necessary and in such locations (including within non-tolled frontage road right-of-way) to maximize the safe and efficient operation of its toll collection system and of the tolled mainlanes. 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 subject to appropriate coordination with TxDOT. The tolled mainlanes shall be owned following the transfer described in Section 2 of this Agreement, operated, maintained, policed, and regulated by the Authority in compliance with all applicable laws, rules, regulations, policies, procedures, and standards, the requirements of the market valuation waiver agreement, and relevant provisions of any trust agreement(s) or similar documentation evidencing or securing the Financing, as hereinafter defined. The parties shall work together to coordinate maintenance activities on the portions of the Project that each will maintain and operate so as to minimize disruptions to service and negative impacts to toll operations.

4. Utility Relocations. The relocation, adjustment, or removal of existing utilities necessary for construction of the Project shall be the responsibility of the Authority, including without limitation the identification of existing utilities and coordination with utility owners to secure relocation of those facilities, 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, 43 TEX. ADMIN. CODE §21.31 et seq. relating to Utility Accommodation, and 23 CFR Part 645. For those utilities in the Project corridor for which relocation may have begun on or after September 1, 2007, the Authority shall pay, or cause to be paid, utility owners pursuant to Section 370.170 of the RMA Act. For those utilities in the Project corridor for which relocation was completed prior to September 1, 2007, TxDOT shall pay utility owners for the relocation of facilities in accordance with applicable law. TxDOT acknowledges that utility relocation activities may be undertaken on the Authority's behalf by its Design/Build CDA contractor, in which case the Authority shall be responsible for ensuring that the Design/Build CDA contractor carries out all such relocation activities in a manner consistent with applicable laws, rules, regulations, policies, procedures, and standards.

5. Construction Obligations of the Authority; Control of Work. The Authority shall be responsible for the 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 all required utility relocation and/or adjustments which began on or after September 1, 2007. Except as provided in this Agreement, the Authority shall have sole authority and responsibility for: (a) the 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, contractors, subcontractors, vendors, sureties, and other parties retained in connection with the financing,

design, construction, maintenance 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 Design/Build CDA; and (e) the negotiation, bidding, and letting of contracts.

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 Texas Transportation 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

During the preliminary and intermediate design phases, TxDOT personnel will participate and provide comments on the design work. TxDOT comments and changes to such design work will be documented in meeting minutes or other documents.

Plans and specifications developed by the Authority for the Project must be in compliance with either the latest version of the 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 paragraph, 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 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 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 or designee shall consider the fact that the tolled mainlanes will not be on the state highway system.

When the design work for each design package is 30% complete, the Authority shall submit, or shall cause its Design/Build CDA contractor to submit, to the TxDOT engineer the information identified in 43 TEX. ADMIN. CODE §27.56(c)(2). The TxDOT engineer and representatives from TxDOT will review and provide comments on the design package to the Authority. TxDOT shall complete its review and the TxDOT engineer shall notify the Authority of its approval or disapproval of the information within fifteen (15) business days of receipt thereof. If no notification is given, the information will be deemed approved. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such fifteen (15) day period. 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. TxDOT comments and changes to such design work will be documented in meeting minutes or other documents.

When the design work for each design package is 65% complete, the Authority shall submit, or shall cause its Design/Build CDA contractor to submit, to the TxDOT engineer the information

identified in 43 TEX. ADMIN. CODE §27.56(c)(2). The TxDOT engineer and representatives from TxDOT will review and provide comments on the design package to the Authority. TxDOT shall complete its review and the TxDOT engineer shall notify the Authority of its approval or disapproval of the information within twenty (20) business days of receipt thereof. If no notification is given, the information will be deemed approved. 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. 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. TxDOT comments and changes to such design work will be documented in meeting minutes or other documents.

After 65% review but prior to commencement of construction of any portion of the Project, the Authority shall provide TxDOT with early release or release for construction designs, plans, and specifications for TxDOT's review. TxDOT shall complete its review and the TxDOT engineer shall notify the Authority of its approval or disapproval of the information within five (5) business days of receipt thereof. The Authority shall make such changes to said designs, plans, and specifications as TxDOT determines are necessary to comply with the design criteria prescribed in this Agreement.

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 their 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 the intended use and safety of the traveling public, and the alternative satisfies the intent of State and Federal specifications. In making this determination, the Executive Director of TxDOT shall consider that the tolled mainlanes will not be part of the state highway system. When final plans for each design package are complete, and after the design package has been reviewed by the Authority, the Authority shall submit, or shall cause its Design/Build CDA contractor to submit, to the TxDOT engineer the information identified in 43 TEX. ADMIN. CODE §27.56(c)(4). The TxDOT engineer and other TxDOT representatives will review the design package and will forward the design package and comments to the Executive Director of TxDOT or designee. TxDOT shall complete its review and the Executive Director of TxDOT or designee shall notify the Authority of his approval or disapproval of the information within five (5) business days of receipt thereof. In the event TxDOT withholds approval of the information submitted, it shall notify the Authority of the reasons therefore within such five (5) day period. 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.

The Authority's Design/Build CDA contractor shall, pursuant to the CDA, certify, prior to any design submittal to the Authority, that the design submittal was developed in accordance with the approved Design Quality Management Plan and meets all required standards.

All revisions to the Design/Build CDA for the Project 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 designee for approval prior to beginning the revised construction work. The Authority shall submit, or shall cause its Design/Build CDA contractor to submit to the TxDOT engineer all proposed contract revisions that are subject to TxDOT approval. The TxDOT engineer and other TxDOT representatives will review the proposed revision and will forward the proposed revision and comments to the Executive Director of TxDOT or designee. TxDOT shall complete its review and the Executive Director of TxDOT or designee shall notify the Authority of his approval or disapproval of the contract revision within twenty (20) business days. 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. 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.

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, 2016. 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.

TxDOT may conduct any and all oversight activities it deems reasonably necessary or advisable to comply with FHWA oversight requirements or as otherwise expressly required by FHWA. TxDOT shall cooperate with the Authority and its Design/Build CDA contractor in conducting such activities, and shall make good faith efforts to minimize or avoid any delay in the performance of development work by the Authority or its Design/Build CDA contractor. The TxDOT Engineer or designee assigned to the Project may attend partnering meetings, weekly construction status meetings, and monthly long-term strategy meetings. The TxDOT Engineer or designee may visit the Project periodically and as reasonably necessary to comply with oversight requirements. Any such visits or oversight activities conducted by TxDOT shall be in accordance with the Authority's and the Design/Build CDA contractor's safety procedures and policies. FHWA may perform construction oversight and periodic construction inspections and review. The Authority shall make available and provide safe access to FHWA to all work areas.

6. Responsibility for Design. The Authority acknowledges and accepts its responsibility for, the design and construction of the Project, and the Authority further acknowledges and fully accepts responsibility for the maintenance, regulation, signage, illumination and overall operation of the tolled mainlanes 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 March 9, 2009. The Authority shall be responsible for compliance with applicable requirements of state and federal law regarding environmental permits, issues, and commitments (EPIC) for the Project. This shall include, without limitation, full compliance with the Environmental Assessment ("EA") and completion of any required Section 7 consultations under the Endangered Species Act and any required mitigation, remediation, 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 obligations granted under the EA and FONSI 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 EA, the cost of the reevaluation or supplement shall be borne by TxDOT if it requests the change in scope and by the Authority if it requests the changes in scope.

8. Contracting Procedures. The Authority is developing the Project through a Design/Build CDA. The process for doing so is authorized under §370.305 through §370.312 of the RMA Act. TxDOT and FHWA representatives have had, and will continue to have, the opportunity to observe the Design/Build CDA procurement process for purposes of confirming compliance with applicable laws and regulations and to participate in and/or oversee 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 CDA procurement process. The Authority shall not execute the Design/Build CDA or authorize work under the Design/Build CDA until TxDOT and FHWA provide, in writing, the required concurrence or approval. The Authority shall ensure compliance by the Design/Build CDA contractor with the applicable provisions of this Agreement.

9. HUB Policy; DBE Guidelines. The Authority shall require its Design/Build CDA contractor to comply with its Business Opportunity Program and 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 CDA 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 periodic reports to TxDOT regarding compliance with this paragraph.

10. Compliance With Applicable Laws. It is the Authority's obligation to monitor the Design/Build CDA contractor retained for the 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 Design/Build CDA contractor 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 Design/Build CDA contractor. The Authority shall cause the Design/Build CDA 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 Paragraph 10. To the extent 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 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 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 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.

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 interoperability standards adopted by TxDOT that are in effect on the date of issuance of the request for detailed proposals for the Project, and with the requirements of any interoperability agreements between TxDOT and the Authority.

12. Maintenance of Records; Audits. The Authority shall maintain all books, documents, papers, accounting records, and other documentation relating to (i) the financing, design, construction, operation, and maintenance of the project and (ii) costs incurred under this Agreement, and shall make such materials available to TxDOT, the FHWA, and the U.S. Office of the Inspector General, or their duly authorized representatives, for review and inspection at its office during the contract period and for four (4) years from the later of the date of completion of the Project work to which those materials relate, or until any pending litigation or claims are resolved. 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 that are applicable to the Project, 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 progress reports for the

Project prepared by the Authority's general engineering consultant. At the earliest possible date following completion of construction of any section of the 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 and TxDOT, respectively, pursuant to the terms and conditions of this Agreement.

14. The Financing. The Authority intends to finance the design and construction of the Project in part with proceeds from the issuance and sale of one or more series of revenue bonds (the "Financing") and for which operating revenues from the Project will be pledged. All of the Authority's obligations regarding the design and construction of the 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 and with accepted practice in the municipal finance industry.

15. The TIFIA Loan. The Authority has applied for additional financing for the Project in the form of a loan through the Transportation Infrastructure Finance and Innovation Act ("TIFIA") as administered by the US Department of Transportation. As required by the RMA Act, the Authority's application for TIFIA financial assistance was previously approved by TxDOT. 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, and subject to TxDOT approval of the application for the TIFIA loan, TxDOT shall 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 and/or information 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;
- (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.

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. Any questions that cannot be resolved by use of the issues resolution ladder will be referred to the Authority's Executive Director or their 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 next 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 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.

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 "Disclosure of Lobbying Activities", attached hereto as Attachment "B" and made a part hereof for all purposes.

20. Federal Debarment Requirements. Pursuant to the provisions of 49 CFR Part 29, the Authority shall require its Design/Build CDA contractor to complete the "Debarment Certification", attached hereto as Attachment "C" and made a part hereof for all purposes. All subcontractors to the Design/Build CDA contractor must complete the "Lower Tier Participation Debarment Certification", a sample copy being attached hereto as Attachment "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 the Financing and the TIFIA loan.

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:

Central Texas Regional Mobility Authority
301 Congress Avenue, Suite 650
Austin, TX 75766
Attention: General Counsel

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

with copies to:

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

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

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 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.

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.

IN WITNESS WHEREOF, TxDOT and the Authority have executed this Agreement by four (4) multiple counterparts on the dates shown herein below, effective on the date listed above.

**CENTRAL TEXAS
REGIONAL MOBILITY AUTHORITY**

**TEXAS DEPARTMENT OF
TRANSPORTATION**

By: _____
Mike Heiligenstein, Executive Director

By: _____
Amadeo Saenz, Jr., Executive Director

Date: _____

Date: _____

EXHIBIT "A"

Central Texas RMA 290 East Toll Project Map

EXHIBIT "B"

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 "C"

- (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 _____

(insert name of lower tier participant) nor its
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