

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

**RESOLUTION NO. 12-026**

**AUTHORIZING AN AGREEMENT WITH THE FEDERAL HIGHWAY  
ADMINISTRATION AND THE TEXAS DEPARTMENT OF TRANSPORTATION  
ADDRESSING USE OF MOPAC IMPROVEMENT PROJECT TOLL REVENUES.**

WHEREAS, Section 129(a) of Title 23 of the United States Code places certain restrictions on the use of federal funds for the construction of tolled highways, requiring that the toll authority enter into an agreement concerning the use of toll revenues; and

WHEREAS, the Mobility Authority has agreed to comply with Section 129(a) and has negotiated terms and provisions of a proposed Section 129 agreement with the Federal Highway Administration and the Texas Department of Transportation, a copy of which is attached and incorporated into this resolution as Attachment A;

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves the proposed Section 129 Agreement; and

BE IT FURTHER RESOLVED, that the Executive Director is hereby authorized to execute the proposed Section 129 Agreement in the form or substantially the same form attached as Attachment A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25<sup>th</sup> day of April, 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: 12-026  
Date Passed: 4/25/2012

**Attachment A**

**Section 129(a) Amendment (on the following 3 pages)**

**AGREEMENT AMONG THE CENTRAL TEXAS REGIONAL MOBILITY  
AUTHORITY, THE TEXAS DEPARTMENT OF TRANSPORTATION, AND THE  
FEDERAL HIGHWAY ADMINISTRATION FOR FUNDING FOR THE  
DEVELOPMENT, DESIGN, AND CONSTRUCTION OF THE MOPAC  
IMPROVEMENT PROJECT.**

THIS AGREEMENT, made and entered into as of this \_\_\_ day of \_\_\_\_\_ 2012, by and among the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY, a political subdivision of the State of Texas, hereinafter referred to as the "Authority," the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas, hereinafter referred to as "TxDOT", and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "FHWA."

**WITNESSETH:**

**WHEREAS**, the Authority desires to construct an 11.2 mile express lane project within the Loop 1 right of way (ROW), extending from Parmer Lane (FM 734) to Cesar Chavez Street in Travis County, Texas (hereinafter referred to as the "Toll Facility"); and

**WHEREAS**, pursuant to Chapter 370 of the Texas Transportation Code (the "RMA Act"), the Authority is authorized and empowered to design, finance, acquire, construct, maintain, repair and operate transportation projects, including turnpike projects; and

**WHEREAS**, pursuant to the RMA Act, the Authority has requested that TxDOT participate in the funding of the project; and

**WHEREAS**, Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code authorize the State to grant funds to assist in the development of turnpike projects; and

**WHEREAS**, Section 129(a)(1)(A) of Title 23, United States Code, as amended, permits Federal participation in the initial construction of a toll highway, bridge, or tunnel (other than a highway, bridge, or tunnel on the Interstate System) or approach thereto; and

**WHEREAS**, the Authority, TxDOT, and FHWA have agreed to be bound by and to comply with provisions of Section 129(a) of Title 23, United States Code, as amended, for the toll facility; and

**WHEREAS**, paragraph 3 of Section 129(a) of Title 23, United States Code, as amended, restricts the use of revenues:

"(3) Limitations on use of revenues - ...all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies

annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title."

**WHEREAS**, the FHWA has determined that the execution of this agreement by the FHWA complies with Section 123, Division C, of the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55 (the "Act"), since the Toll Facility is not in actual operation as of the November 14, 2011, which is the date of enactment of the Act;

**NOW THEREFORE**, TxDOT, the Authority, and FHWA hereto agree as follows:

1. TxDOT and the Authority agree that the toll revenues from the operation of the Toll Facility will be used first for debt service (including the funding of reasonable reserves), for reasonable return on investment of any private person financing a project on the Toll Facility (if any), and for the costs necessary for the proper operation and maintenance of the Toll Facility, including reconstruction, resurfacing, restoration, and rehabilitation, as provided in paragraph 3 of Section 129(a) of Title 23, United States Code, as amended.

2. In accordance with Section 129(a) of Title 23, United States Code, as amended, TxDOT and the Authority hereby certify that they can and will comply with the following requirements provided in paragraph 3 of Section 129(a), Title 23, United States Code, as amended:

The Authority and TxDOT agree to certify annually that the Toll Facility is being adequately maintained. If it provides such certification, the Authority may use any toll revenues in excess of amounts required under paragraph 3 of Section 129(a), Title 23, United States Code, as amended, for any purpose for which Federal funds may be obligated by a State or a public authority operating within a State under Title 23, United States Code. One certification submitted by either party to the FHWA shall be sufficient to satisfy the requirements of this paragraph so long as both parties are bound by such certification.

3. The Authority and TxDOT each agree, upon reasonable notice, to make all of its records pertaining to the Toll Facility subject to audit by FHWA. The Authority and TxDOT agree to annually audit the records of the Toll Facility for compliance with the provisions of this Agreement and report the results thereof to FHWA. In lieu of the Authority and TxDOT performing said audit, a report of an independent auditor furnished to the Authority, TxDOT, and FHWA will satisfy the requirements of this section.

4. This Agreement shall (a) bind and benefit the parties' successors and assigns, including any party that succeeds to the interests or obligations of a party and (b) be prepared in triplicate originals so that each signatory will have an original Agreement.

IN WITNESS WHEREOF, the Authority, TxDOT and FHWA hereunto have caused this Agreement to be duly executed as of the day and year first written above.

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

\_\_\_\_\_  
MIKE HEILIGENSTEIN  
Executive Director

**TEXAS DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FEDERAL HIGHWAY ADMINISTRATION**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_