

FINANCIAL ASSISTANCE AGREEMENT

This Agreement is made by and between the Texas Department of Transportation, an agency of the State of Texas (“TxDOT”), and the Central Texas Regional Mobility Authority, a political subdivision of the State of Texas (“CTRMA”), for the purpose of providing financial assistance in connection with the development and construction of the proposed MoPac Improvement Project in Travis County.

RECITALS

The parties acknowledge the following:

- A. CTRMA is a regional mobility authority operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE § 26.1 et seq. (the “RMA Rules”).
- B. CTRMA's goals include improving mobility within Travis and Williamson counties. To further that goal, CTRMA previously exercised its option under state law to develop, construct, and operate the proposed MoPac Improvement Project, an 11.2 mile toll project in Travis County to improve the existing Loop 1 facility from just north of Parmer Lane (FM 734, the northern terminus, south to Cesar Chavez Street, the southern terminus) (the “MoPac Improvement Project”). The MoPac Improvement Project is included in the 2035 Transportation Plan approved by the Capital Area Metropolitan Planning Organization (“CAMPO”) Transportation Policy Board on May 24, 2010 and is consistent with the Statewide Transportation Plan.
- C. TxDOT, pursuant to Article III, Section 52-b of the Texas Constitution and Section 222.103 of the Texas Transportation Code, is authorized to participate, through the expenditure of money from any source, in the acquisition, construction, maintenance, or operation of a toll facility of a public entity.
- D. Section 370.301 of the RMA Act authorizes TxDOT to provide for or contribute to the payment of costs of the design, financing, construction, operation, or maintenance of a turnpike project of CTRMA on terms agreed to by TxDOT and CTRMA.
- E. TxDOT has adopted rules at 43 TEX. ADMIN. CODE § 27.50 et seq. (the “Toll Equity Rules”) setting forth the policies and procedures by which it will participate in the financing of a toll facility which is not under its jurisdiction.
- F. On September 13, 2010, TxDOT and CTRMA executed a market valuation agreement in which they agreed to waive the development of a market valuation pursuant to then applicable law and further agreed that the MoPac Improvement Project would be developed pursuant to specified terms and conditions.
- G. On September 29, 2010, the CTRMA Board of Directors (the “Board”) voted to exercise CTRMA’s option under state law to develop the MoPac Improvement Project.

H. On or about July 3, 2012, CTRMA submitted a request, pursuant to the Toll Equity Rules, for financial assistance in the amount of \$197.6 million to fund the costs of constructing the MoPac Improvement Project, from north of Parmer Lane to Cesar Chavez Street, including the costs of utility relocation, construction of sound walls, installation of tolling equipment, and construction of grade separated ramps providing access to and from downtown Austin.

I. On July 26, 2012, and August 30, 2012, the Texas Transportation Commission (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, to be used for the purposes identified in the preceding paragraph. In Minute Order No. 113252, approved on August 30, 2012, the commission authorized the Executive Director of TxDOT to enter into a financial assistance agreement with CTRMA.

J. On September 13, 2012, the Board accepted the grant of financial assistance and, in Resolution No. 12-066, authorized the Executive Director of CTRMA to enter into a financial assistance agreement with TxDOT.

AGREEMENT

In light of the foregoing recitals, and for good and other valuable consideration, the parties agree as follows:

1. TxDOT will provide financial assistance to CTRMA in the amount of \$197.6 million, to be used to pay or provide reimbursement for the costs of constructing the MoPac Improvement Project, from north of Parmer Lane to Cesar Chavez Street, including the costs of utility relocation, construction of sound walls, installation of tolling equipment, and construction of grade separated ramps providing access to and from downtown Austin. This funding is committed by TxDOT and is not subject to future discretionary actions of TxDOT or the commission. The parties recognize that this funding commitment is an integral part of the overall plan of finance for the MoPac Improvement Project. The parties further recognize and acknowledge that the funds committed herein may be applied to reimburse costs incurred prior to, and in anticipation of, receipt of those funds.

2. Funds to be made available pursuant to this Agreement shall be disbursed over a period of three fiscal years beginning in FY 2013 and are subject to appropriation. Subject to the foregoing, and provided that CTRMA is in compliance with the terms of this Agreement, funds shall be disbursed in quarterly disbursements of approximately equal amounts within each fiscal year in the aggregate amount for each fiscal year set forth below. The quarterly disbursements shall be made on the following dates within each fiscal year (provided that if such day falls on a weekend or holiday, the disbursement shall be made on the next business day): November 30, February 28, May 31, and August 31.

(a)	FY 2013	\$66,000,000.00
(b)	FY 2014	\$66,000,000.00
(c)	FY 2015	\$65,600,000.00

By way of example, in FY 2014, TxDOT shall disburse \$16,500,000.00 on each of the aforementioned dates (subject to the terms of this Agreement). CTRMA will maintain transaction level expenditure information relating to expenditures paid or reimbursed with funds provided under this Agreement, and will provide, on a quarterly basis, a written report prepared by its General Engineering Consultant detailing the status of project construction and the specific use of the granted funds during the previous quarter, including without limitation the use of those funds to reimburse costs incurred in anticipation of the receipt of those funds. Costs paid or reimbursed by CTRMA using funds granted under this Agreement shall be paid or reimbursed in accordance with applicable policies of CTRMA and other applicable state and federal laws, including the applicable requirements of OMB Circular A -87.

3. CTRMA will deliver to TxDOT prior to each disbursement a certificate in which CTRMA certifies that the disbursement, when added to the amount of all prior disbursements, will not exceed the aggregate amount of costs allowable under this Agreement. TxDOT shall have the right to request and CTRMA shall provide written documentation, including copies of invoices, reports or notices, evidencing previously incurred costs being reimbursed or in support of the need for disbursed funds and the intended use of those funds. Any unexpended funds provided to CTRMA under this Agreement that exceed the aggregate amount of costs of the type allowed by the terms hereof shall be returned to TxDOT.

4. To the extent funds disbursed hereunder are utilized, consistent with the authorized purposes under this Agreement, to procure tangible work product, TxDOT shall have the right to review such work product.

5. Subject to paragraph 6 below and this paragraph 5, amounts disbursed to, or on behalf of, CTRMA pursuant to this Agreement shall not be subject to repayment to TxDOT, provided that CTRMA agrees to use surplus revenues (as that phrase is defined in the RMA Act) from the MoPac Improvement Project to pay the costs of other transportation projects as authorized by Sec. 370.174(b) of the RMA Act, in an amount at least equal to the amount of funds disbursed under this Agreement, and further provided that this commitment may be subordinate to any obligation on the part of the CTRMA to hold and disburse funds for projects as directed by the Capital Area Metropolitan Planning Organization ("CAMPO") in connection with the funding of the MoPac Improvement Project.

6. In the event that development of the MoPac Improvement Project is terminated by CTRMA prior to opening of the project for revenue operation, then: (i) all work product procured with funds granted under this Agreement shall, at TxDOT's request, be transferred to the department, along with all right, title and interest in such work product; and (ii) TxDOT shall disburse to CTRMA any undisbursed amounts of the financial assistance needed to pay or reimburse costs incurred by CTRMA prior to such termination; provided that such disbursement shall not exceed the aggregate amount of project development costs incurred prior to such termination. All unexpended funds provided to CTRMA under this Agreement that exceed the aggregate amount of project development costs incurred prior to such termination shall be returned to TxDOT.

7. CTRMA will comply with applicable state and federal law in the performance of its work under the Agreement and will comply with any other applicable provision of the Toll Equity Rules and requirements of the future project development agreement between TxDOT and CTRMA relating to the performance of work. CTRMA shall not begin construction of the MoPac Improvement Project until a project development agreement for the project is executed by TxDOT and CTRMA.

8. The parties shall comply with the cost principles established in OMB Circular A-87. The parties shall adhere to the procurement standard established in 49 CFR §18.36 and with the property management standard established in 49 CFR §18.32.

9. CTRMA will maintain its books and records relating to the MoPac Improvement Project, the financial assistance provided under the Agreement, and costs paid or reimbursed using funds provided under the Agreement in accordance with the requirements of the Toll Equity Rules, and will comply with the audit requirements and other requirements relating to project records in accordance with the Toll Equity Rules.

10. Pursuant to this Agreement, (i) TxDOT will inform the CTRMA of whether the assistance provided under this Agreement was funded, in whole or in part, with proceeds of tax-exempt obligations issued by TxDOT (the "TxDOT Bonds"), and (ii) if so funded, the CTRMA will:

(a) maintain ownership of the MoPac Improvement Project and refrain from using any amounts received under this Agreement to make any loans;

(b) refrain from taking any action that would result in any TxDOT Bonds being "federally guaranteed," within the meaning of section 149(b) of the Code;

(c) not take any action that would cause more than 10 percent (or 5 percent if the use is disproportionate or unrelated to the governmental purpose) of the MoPac Improvement Project to be used for any "private business use," within the meaning of section 141(b) of the Internal Revenue Code of 1986 (the "Code"), unless the CTRMA delivers to TxDOT, within 45 calendar days of such action, an opinion of a nationally-recognized bond counsel that such action taken by the CTRMA with respect to the MoPac Improvement Project (including, without limitation, any leases, management contract, other than management contract that complies with the guidelines of Rev. Proc. 97-13, or other agreement with any party other than a state, local or governmental entity) will not cause the TxDOT Bonds to be "private activity bonds", within the meaning of section 141(b) of the Code.

11. The State Auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State

Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

12. If either party defaults in the performance of any obligation described in this Agreement, the other party may exercise any rights and remedies granted by law or this Agreement.

13. This Agreement does not constitute TxDOT approval of the MoPac Improvement Project or TxDOT approval for CTRMA to construct the MoPac Improvement Project.

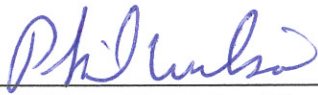
14. The parties acknowledge and agree that CTRMA must comply with all environmental permits, issues and commitments necessary for development and ultimate operation of the MoPac Improvement Project. CTRMA shall provide TxDOT with written certification from appropriate regulatory agencies that identified environmental problems have been addressed in the environmental clearance documentation,

15. The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When requested, CTRMA shall furnish TxDOT with satisfactory proof of this compliance. CTRMA shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

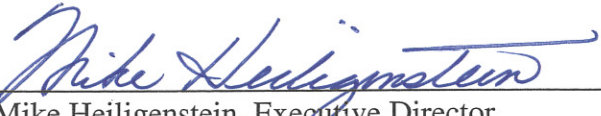
16. This Agreement shall be effective from the date indicated below until December 31, 2020. Any funds not expended at that time will not be available to CTRMA.

17. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

TEXAS DEPARTMENT OF TRANSPORTATION

By: 
Phil Wilson, Executive Director
Date: 9/13/12

**THE CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY**

By: 
Mike Heiligenstein, Executive Director
Date: 9/13/12

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

RESOLUTION NO. 12-066

APPROVE THE FINANCIAL ASSISTANCE AGREEMENT WITH THE
TEXAS DEPARTMENT OF TRANSPORTATION FOR FUNDING TO
DEVELOP AND BUILD THE MOPAC IMPROVEMENT PROJECT.

WHEREAS the goals of the Central Texas Regional Mobility Authority (“Mobility Authority”) include improving mobility within Travis and Williamson counties and, to further that goal, the Mobility Authority previously exercised its option under state law to develop, construct, and operate the proposed MoPac Improvement Project, an 11.2 mile toll project in Travis County to improve the existing Loop 1 facility from just north of Parmer Lane (FM 734) on its northern terminus south to Cesar Chavez Street, its southern terminus (the “Project”); and

WHEREAS pursuant to Article III, Section 52-b of the Texas Constitution and Sections 222.103 and 370.301 of the Texas Transportation Code, the Texas Department of Transportation (“TxDOT”) is authorized to participate, through the expenditure of money from any source, in the costs of the design, financing, construction, operation, or maintenance of a turnpike project of the Mobility Authority on terms agreed to by TxDOT and the Mobility Authority; and

WHEREAS TxDOT has adopted rules at 43 TEX. ADMIN. CODE § 27.50 et seq. (the “Toll Equity Rules”) setting forth the policies and procedures by which it will participate in the financing of a toll facility which is not under its jurisdiction; and

WHEREAS on September 13, 2010, TxDOT and the Mobility Authority executed a market valuation agreement in which they agreed to waive the development of a market valuation pursuant to then applicable law and further agreed that the Project would be developed pursuant to specified terms and conditions; and

WHEREAS on or about July 3, 2012, the Mobility Authority submitted a request, pursuant to the Toll Equity Rules, for financial assistance in the amount of \$197.6 million to fund the costs of constructing the Project; and

WHEREAS on July 26, 2012, and August 30, 2012, the Texas Transportation Commission (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, to be used to fund the costs of constructing the Project, including the costs of utility relocation, construction of sound walls, installation of tolling equipment, and construction of grade separated ramps providing access to and from downtown Austin; and

WHEREAS in Minute Order No. 113252, approved on August 30, 2012, the commission authorized the Executive Director of TxDOT to enter into a financial assistance agreement with the Mobility Authority; and

WHEREAS, the financial assistance agreement for the Project proposed by and negotiated with TxDOT in its final form and as recommended by the Executive Director is attached as Exhibit 1 to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the financial assistance agreement attached as Exhibit 1 to this resolution; and

BE IT FURTHER RESOLVED that the Board hereby authorizes the Executive Director to execute on behalf of the Mobility Authority the financial assistance agreement in the form or substantially the form attached as Exhibit 1.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 13th day of September, 2012.

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: 12-066
Date Passed: 9/13/2012

Exhibit 1 to Resolution No. 12-066

Financial Assistance Agreement

[following 5 pages]