PROJECT DEVELOPMENT AGREEMENT
INTERNATIONAL BRIDGE TRADE CORRIDOR

TEXAS DEPARTMENT OF TRANSPORTATION
AND
HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

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INTERNATIONAL BRIDGE TRADE CORRIDOR
PROJECT DEVELOPMENT AGREEMENT

STATE OF TEXAS §
§
COUNTY OF HIDALGO §

This Project Development Agreement (this "Agreement"), by and between the **TEXAS DEPARTMENT OF TRANSPORTATION**, an agency of the State of Texas, as authorized by the Texas Transportation Commission ("TxDOT") and the **HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY**, a political subdivision of the State of Texas (the "Authority") is executed to be effective this 10th day of December, 2010 (the "Effective Date").

WITNESSETH

WHEREAS, the Authority was created pursuant to the request of Hidalgo County, Texas (the "County") and in accordance with provisions of the Texas Transportation Code (the "Transportation Code") and the petition and approval process established in 43 Tex. Admin. Code §26.1 *et seq*. (the "RMA Rules"); and

WHEREAS, the Authority now operates pursuant to Chapter 370 of the Transportation Code (the "RMA Act") and the RMA Rules, as well as its own policies and procedures; and

WHEREAS, TxDOT and the Authority entered into that certain Market Valuation Agreement dated effective June 24, 2010, in which the parties agreed to the terms and conditions for the International Bridge Trade Corridor toll project (the "Project"); and

WHEREAS, on July 29, 2010, the Authority exercised its option to develop the Project pursuant to Transportation Code, §228.0111(g); and

WHEREAS, a project development agreement which sets forth the responsibilities of TxDOT and the Authority in connection with the development, design, and construction of the Project is required under 43 Tex. Admin. Code §26.34;

AGREEMENT

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and promises of the parties as described in this Agreement, TxDOT and the Authority agree as follows:

1. **Project Definition.** As used in this Agreement, the term "Project" shall mean a new 2-lane divided limited access toll facility known as the International Bridge Trade Corridor, consisting of: (1) a west leg from US 281 east of SP 600, north and east to FM 3072, continuing east and connecting to the east leg just west of FM 493, being approximately 13.3 miles in length, and (2) an east leg from FM 493 north of US 281 to US 83 Expressway, being approximately 2.5 miles in length, all as shown on the map attached as Exhibit A attached hereto and incorporated into this Agreement by reference.

2. **Responsibility of Authority.** The Authority shall solely be responsible for the development, design, construction, operation and maintenance of the Project, including without limitation all costs thereof and any other Project costs. TxDOT shall have no obligation to fund any portion of the cost of the Project. The Authority certifies to TxDOT that no federal funds will be used in connection with the Project.

3. **Environmental Report, Mitigation, Remediation, and Compliance.**

a. The Authority shall comply with all applicable federal and state environmental laws, including the National Environmental Policy Act of 1969 ("NEPA"), the National Historic Preservation Act of 1966, the Clean Water Act, the Endangered Species Act, Texas Natural Resources Code, Chapter 191, and 43 Tex. Admin. Code Chapter 2, Subchapter A.

b. The Authority shall conduct an environmental assessment of the Project in accordance with rules adopted by the agency pursuant to the requirements of §370.188(a) of the Texas Transportation Code (the "Environmental Rules"); provided, however, that if any federal agency or authority requires it, the Authority shall conduct an environmental assessment for the Project that complies with all requirements of NEPA. The environmental assessment for the Project and any related documents, including without limitation a finding of no significant impact and any letter of approval from a federal agency or authority, collectively constitute the "Environmental Documents". The Authority will provide the Environmental Documents to TxDOT as soon as they are available.

c. The Authority shall prepare for and conduct all public meetings and hearings required for development of the Environmental Documents and for summary and analysis of all public meetings and hearings. When applicable, the Authority is also responsible for certifying that a public hearing has been held in accordance with the Environmental Rules and federal laws and regulations, including the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987.

d. The Authority shall obtain the opinion of legal counsel showing the Authority's environmental review and public involvement for the Project complies with all applicable federal laws and regulations.

e. The Authority is responsible for all environmental mitigation, remediation, and compliance identified in the Environmental Documents or otherwise required by law.

The Authority shall implement or obtain all Environmental Permits, Issues and Commitments (as defined in 43 Tex. Admin. Code. §26.2(7) ("EPIC") identified in the Environmental Documents, except as otherwise required by law or by agreement between TxDOT and a state or federal agency. Prior to beginning construction, the Authority shall provide TxDOT with written certification that all required EPIC are complete. The Authority is responsible for ensuring that all EPIC are addressed in the design and construction of the Project.

4. **Commission Approval.**

a. The Authority must obtain the approval of the Texas Transportation Commission after completing the environmental review required by §370.188 of the Texas Transportation Code and federal law and before construction of the Project begins in accordance with the requirements of 43 Tex. Admin. Code §§11.58 and 26.31.

b. To secure the approval required under subsection (a) above, the Authority shall submit all information required by 43 Tex. Admin. Code §§11.58 and 26.31.

5. **Right of Way.**

a. The Authority is responsible for the acquisition of any right of way and easements necessary for the Project. The Authority must comply with all applicable state and federal laws, rules and regulations, and with the Authority's policies and procedures.

b. The Authority shall have, and TxDOT hereby grants to the Authority, a license and rights of entry and possession on, over, and under such area and right of way owned by, subsequently acquired, and otherwise under TxDOT's control as necessary to enable the Authority to cause the Project to be constructed and operated. Such license and rights of entry and possession shall cease upon the termination of this Agreement, unless otherwise agreed to by the parties.

6. **Utilities.** The Authority shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws and regulations and any other laws, regulations, rules, policies and procedures applicable to the Authority.

7. **Project Design and Construction.**

a. All designs developed by or on behalf of the RMA shall comply with the latest version of TxDOT's manuals, including, but not limited to, the Roadway Design Manual, Pavement Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, Bridge Design Manual, and the Texas Accessibility Standards. The Authority may request approval to use different accepted criteria for a particular item of work, or to deviate from the state or alternative criteria for a particular design element, in accordance with 43 Tex. Admin. Code §26.33.

b. All plans, specifications and estimates developed by or on behalf of the Authority for the Project, and all construction and maintenance performed by or on behalf of the Authority for the Project, must conform to the latest version of TxDOT's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, unless the Executive Director of TxDOT or designee approves the use of an alternative construction specification in accordance with 43 Tex. Admin. Code §26.33.

c. The Authority shall be responsible for administration of all Project contracts, which includes the responsibility for inspection and material acceptance testing, and for ensuring any contract revisions comply with the latest version of applicable national or state administration criteria and manuals.

d. If the Project will change the access control line to an interstate highway, the Authority shall submit to the TxDOT Engineer (defined below) all data necessary for the department to request Federal Highway Administration approval pursuant to 43 Tex. Admin. Code §26.33(f).

e. The Pharr District of TxDOT has designated an engineer (the "TxDOT Engineer"), who will be assisted by other TxDOT personnel, to oversee TxDOT's responsibilities in the Project design. During the preliminary and intermediate design phases, TxDOT personnel may participate in over-the-shoulder reviews and design workshops to provide comments on the Project design work as it progresses. TxDOT comments and any related changes to such design work will be documented in meeting minutes or other documents.

f. In addition to the above, with regard to any segment of the Project that connects to the state highway system or a TxDOT rail facility, including an overpass, underpass, intersection or interchange (each such segment, a "Connection"):

1. When design of the Connection is approximately 30% complete, the Authority shall submit the preliminary design information required under 43 Tex. Admin. Code §26.33(h)(3) to the TxDOT Engineer for review and approval. TxDOT shall complete its review and the TxDOT Engineer shall notify the Authority of its approval or disapproval of the information within 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 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 10 business days. TxDOT comments and changes to such design work will be documented in meeting minutes or other documents.

2. When final plans for a Connection are complete, the Authority shall submit to the TxDOT Engineer the information described in 43 Tex. Admin. Code §26.33(h)(4). The TxDOT Engineer and other TxDOT representatives will review the information and will forward the information 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 30 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 30 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 30 business days.

3. The Authority shall not advertise the Project for receipt of bids until it has received approval of the plans, specifications and estimate from TxDOT pursuant to subsection 7(f)(2) above (the "Approved PS&E").

4. All contract revisions related to the Connection shall comply with the requirements of 43 Tex. Admin. Code §26.33.

5. The Authority shall comply with the design and construction requirements of 43 Tex. Admin. Code §11.58.

g. The Authority shall not commence construction on the Project until it has received Commission approval in accordance with Section 4(a) above.

8. **Completion.** Within 6 months after final acceptance of the Project, the Authority shall file with TxDOT a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed and dated by a Texas licensed professional engineer certifying that the Project was constructed in accordance with the Approved PS&E.

9. **Operation and Maintenance of the Project.** The Authority shall operate and maintain the Project facilities in accordance with all applicable state and federal laws, rules, regulations, policies, procedures, and standards, and in accordance with the requirements of the Market Valuation Agreement for the International Bridge Trade Corridor Project, effective June 24, 2010. The operation of the Project shall include, without limitation, the provision, operation and maintenance of tolling equipment, the performance of toll transaction services, policing, regulation, and the operation of an electronic toll collection system including all billing and customer services functions. The Authority shall perform all maintenance and repair work for the Project in a manner that meets or exceeds the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways in its implementation of Government Accounting Standards Boards Statement No. 34. All maintenance shall comply with applicable federal and state environmental laws and regulations, and the Authority shall obtain all required environmental clearances on maintenance activities. The Executive Director of TxDOT may exercise discretion in authorizing alternative maintenance standards if the Executive Director of TxDOT determines that the alternative standards are sufficient to protect the safety of the traveling public and to protect the integrity of the transportation system.

10. **Document and Information Exchange.** If available, the Authority agrees to deliver to the TxDOT Engineer all materials used in the development of the Project, including but not limited to aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

11. **Mutual Cooperation.** TxDOT and the Authority shall use all reasonable efforts to meet all deadlines specified in this Agreement. TxDOT and the Authority shall use best efforts to provide each other with all necessary documents, information, and approvals in a prompt and timely fashion.

12. **Termination.** This Agreement may be terminated upon the occurrence of any 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;

c. by satisfactory completion of all responsibilities and obligations described herein;

d. by the Authority, in the event available funding is not sufficient to construct the Project based on bids received from prospective contractors or in the event that cost of requirements for environmental assessment, mitigation, remediation or compliance are in excess of funding available to the Authority for the Project and no additional funding can be secured.

13. **Remedies.** This Agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

14. **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:

Hidalgo County Regional Mobility Authority
510 S. Pleasantview Drive
Weslaco, Texas 78596
Attention: _____

With copies to:

Tuggey Rosenthal Pauerstein Sandoloski Agather LLP
755 East Mulberry, Suite 200
San Antonio, Texas 78212

Attention: Blakely Fernandez

Texas Department of Transportation
Pharr District Office
600 W. Expressway 83
P.O. Box 1717
Pharr, Texas 78577-1717
Attention: District Engineer

With copies to:

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

Unless specifically identified as "business days", all references in this Agreement to the term "days" shall be construed as "calendar days."

15. **Maintenance of Records**. All records and documents prepared by the Authority under this Agreement must be made available to authorized representatives of TxDOT during normal work hours. All records and documents prepared under this Agreement relating to the construction of the Project must be maintained by the Authority for three (3) years after final payment of construction costs incurred in connection with the Project, or all pending legal actions related to the construction of the Project are completed, whichever occurs later. Notwithstanding the foregoing, the Authority shall comply with all applicable laws pertaining to the retention of records and the provision of access thereto. The Authority shall provide authorized representatives of TxDOT with access to all operating and financial records of the Authority. The Authority shall maintain its books and records in accordance with generally accepted accounting principles in the United States and shall have an annual financial and compliance audit of such books and records conducted in accordance with the requirements of 43 Tex. Admin. Code §26.62. The Authority shall retain all work papers and reports for a minimum of four years from the date of the audit report and shall, upon request, provide TxDOT with a copy of any work papers and reports relating to an audit of those books and records.

16. **Authority Resources.** All employees and consultants of the Authority shall have adequate knowledge and experience to enable them to perform the duties assigned to them. The Authority certifies that it currently has adequate qualified personnel in its employment or under contract to perform the work required under this Agreement. On receipt of written notice from TxDOT detailing supporting factors and evidence, the Authority shall remove from the Project any employee or consultant of the Authority who is incompetent or whose conduct becomes detrimental to the work. The Authority and its consultant shall furnish all equipment, materials, supplies, and other resources required to perform the work.

17. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such provision shall, to the fullest extent permitted by law, be reformed to effectuate the intention of the parties expressed in such provision. To the extent that it cannot be so reformed, that invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

18. **Insurance.** To the extent that this Agreement authorizes the Authority or its contractor to perform any work on TxDOT right of way, before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on TxDOT right of way. This coverage shall be maintained until all work on TxDOT right of way is complete. If coverage is not maintained, all work on TxDOT right of way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

19. **Hold Harmless.** To the extent permitted by law, each party shall save harmless the other party and its officers and employees from all claims and liability due to the materials or activities of the first party, its agents, or employees, performed under this contract that are caused by or result from error, omission, or negligent act of the first party or of any person employed by the first party. To the extent permitted by law, each party shall also indemnify and save harmless the other party from any and all expense, including but not limited to attorney fees that may be incurred by the other party in litigation or otherwise resisting the claim or liabilities that may be imposed on the other party as a result of such activities by the first party, its agents, or employees that are caused by or result from error, omission or negligent act of the fist party or of any person employed by the first party.

20. **Gratuities.** Any person who is doing business with or who reasonably speaking may do business with TxDOT under this Agreement may not make any offers of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of TxDOT's Executive Director. Any person employed by a company under contract with the Authority to work on this Project will abide by the same rules regarding gratuities offered to employees of TxDOT, and shall also comply with policies of the Authority regarding receipt of gratuities.

21. **Conflict of Interests.** Neither TxDOT or the Authority shall 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 or the Authority relating to the Project;

b. has a direct or indirect financial interest in the outcome of the Project (other than as an employee of TxDOT or the Authority);

c. has performed services regarding the subject matter of the Project for an entity other than TxDOT or the Authority 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 the Authority.

22. **Procurement.** The Authority shall comply with all applicable laws, rules, regulations, policies and procedures in connection with the procurement of services for the Project, including without limitation competitive bidding requirements and the requirements of Chapter 2254 of the Texas Government Code.

23. **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. **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.

25. **Relationship of the Parties.** Except for the limited purposes expressly stated herein, 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. 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.

26. **Compliance with Laws.** The Authority shall comply at all times with any and all applicable federal, state and local laws, rules, and regulations applicable to the Project, the Authority and the state highway system, and shall provide or obtain all applicable permits, plans and other documentation required by a federal or state entity.

27. **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.

28. **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.

29. **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 creating any liability in favor of any third party or parties against either TxDOT or the Authority, relieving any third party or parties from any liabilities of such third party or parties to TxDOT or the Authority, or giving any benefits, rights, remedies, or claims to any other public or private person, firm, corporation or other entity.

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.

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.

HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

By: _____

Name: Dennis Burleson

Title: Chairman

Date: 12/2/2010

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Amadeo Saenz, Jr.

Executive Director

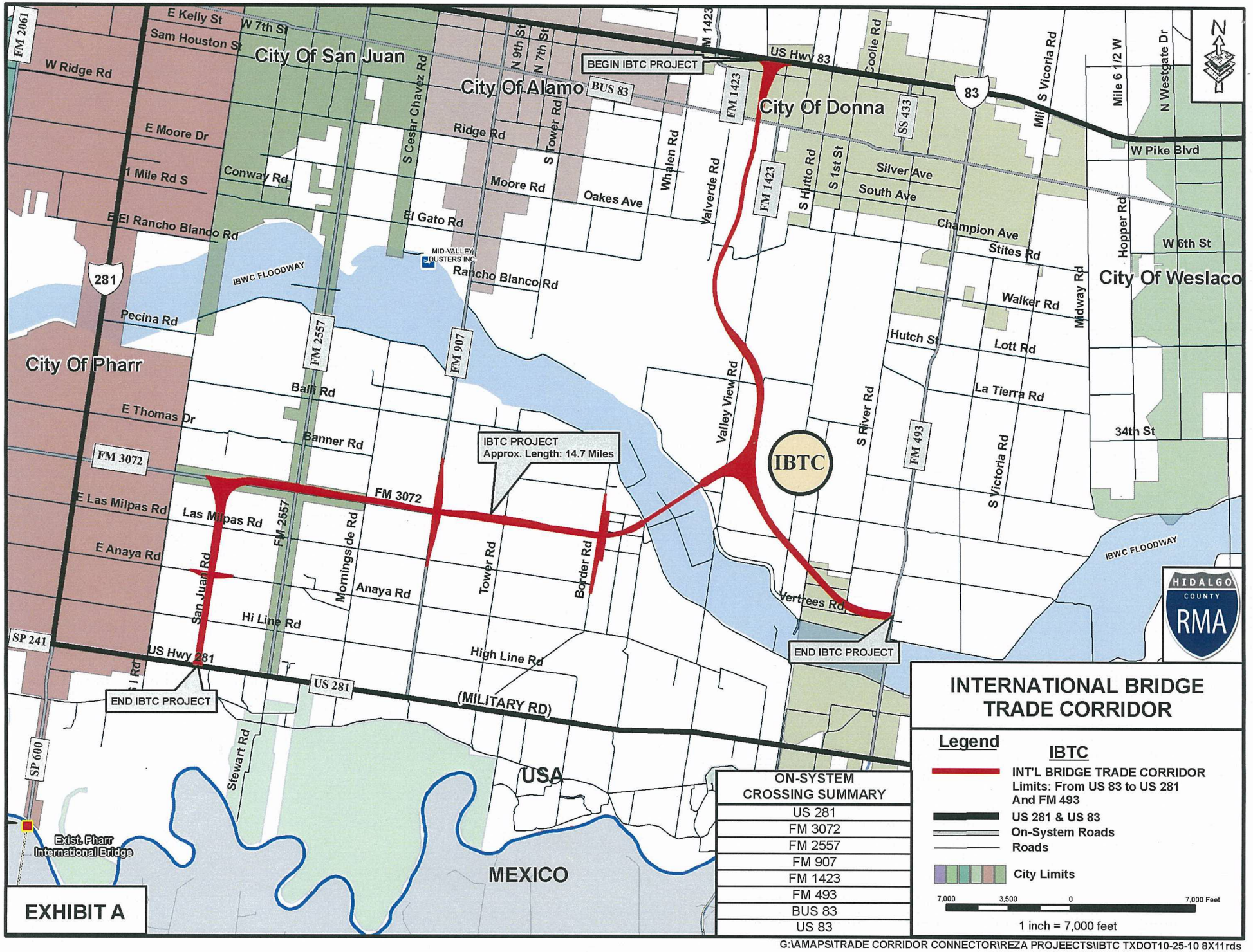
Date: 12/10/10

EXHIBIT A

Map of Project

(Attached)

Project Map



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HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY

BOARD RESOLUTION No. 2010-67

APPROVING THE PROJECT DEVELOPMENT AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION RELATED TO THE INTERNATIONAL BRIDGE TRADE CORRIDOR PROJECT

THIS RESOLUTION is adopted this 23rd day of November, 2010 by the Board of Directors of the Hidalgo County Regional Mobility Authority.

WHEREAS, the Hidalgo County Regional Mobility Authority (the "Authority"), acting through its Board of Directors (the "Board"), is a regional mobility authority created pursuant to Chapter 370, Texas Transportation Code, as amended (the "Act");

WHEREAS, on November 17, 2005, the Texas Transportation Commission (the "Commission") created the Authority pursuant to (i) the Act; (ii) Title 43, Texas Administrative Code; (iii) a petition of the Hidalgo County Commissioners Court (the "County"); and (iv) findings by the Commission that the creation of the Authority would result in certain direct benefits to the State of Texas (the "State"), local governments, and the traveling public and would improve the State's transportation system;

WHEREAS, the Commission determined that the Authority would benefit the State by constructing needed roadway projects as identified by the County, including the approximately 104-mile Hidalgo County Loop (the "Loop System"), the US 83 La Joya Relief Route, and a US 281 alternate route from north of Edinburg to the Pharr International Bridge;

WHEREAS, the Authority designated the International Bridge Trade Corridor as an independent project under the Loop System as a project for development;

WHEREAS, pursuant to Title 43 of the Texas Administrative Code, Rules 26.33 and 26.34, the Authority must enter into a project development agreement with the Texas Department of Transportation for the development of the International Bridge Trade Corridor, which connects to the State Highway System;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY THAT:

Section 1. The recital clauses are incorporated in the text of this Resolution as if fully restated.

Section 2. The Authority approves terms and conditions in substantially the same form as attached hereto as Exhibit A; and, further, the Board authorizes the Chairman to execute an agreement substantially the same as the attached version upon review and recommendation of general counsel.

*****

PASSED AND APPROVED AS TO BE EFFECTIVE IMMEDIATELY BY THE BOARD OF DIRECTORS OF THE HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY AT A REGULAR MEETING on the 23rd day of November, 2010, at which meeting a quorum was present.

Dennis Burleson, Chairman

Forrest Runnels, Secretary/Treasurer

EXHIBIT A

PROJECT DEVELOPMENT AGREEMENT BY AND BETWEEN THE HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY AND THE TEXAS DEPARTMENT OF TRANSPORTATION FOR THE INTERNATIONAL BRIDGE TRADE CORRIDOR