

## **ACTION ITEMS**

**(3) ACTION ITEMS.**

- (D) CONSIDERATION AND APPROVAL OF ORDER ESTABLISHING TRANSPORTATION REINVESTMENT ZONE NUMBER SIX AND A TAX INCREMENT ACCOUNT FOR SUCH ZONE, AND APPROVING AN AGREEMENT WITH THE CAMERON COUNTY REGIONAL MOBILITY AUTHORITY FOR THE TRANSFER, ASSIGNMENT, PLEDGE AND/OR PAYMENT OF A PORTION OF THE TAX INCREMENT ACCOUNT FUNDS TO SUCH AUTHORITY FOR THE DEVELOPMENT OF TRANSPORTATION PROJECTS (RESOLUTION NO. 2015R12077). (DAG-COUNTY ADMINISTRATOR)**

Judge Pro-Tem Dominguez announced that County Judge Pete Sepulveda was not present during the discussions of this item and the related Executive Session Item.

Commissioner Garza motioned to approve the Order establishing Transportation Reinvestment Zone Number Six and a Tax Increment Account for Such Zone, and approving an Agreement with the Cameron County Regional Mobility Authority for the transfer, assignment, pledge and/or payment of a portion of the Tax Increment Account Funds to such Authority for the development of transportation projects subject to changes.

The motion was seconded by Commissioner Sanchez and carried as follows:

AYE: Commissioner Benavides, Commissioner Garza, Commissioner Sanchez and Judge Pro-Tem Dominguez

NAY: None

ABSENT: Judge Sepulveda

THE STATE OF TEXAS §  
§  
COUNTY OF CAMERON §

Contract No. 2015C12355

**CAMERON COUNTY, TEXAS AND CAMERON COUNTY REGIONAL MOBILITY  
AUTHORITY INTERLOCAL AGREEMENT TO PARTICIPATE IN  
TRANSPORTATION REINVESTMENT ZONE NO. SIX, COUNTY OF CAMERON**

This Interlocal Agreement (this "Agreement") is made and entered into by and between the County of Cameron, Texas (the "County"), and Cameron County Regional Mobility Authority (the "CCRMA"), each a political subdivision of the State of Texas (collectively, the "Parties").

**W I T N E S S E T H:**

WHEREAS, the CCRMA is a regional mobility authority created pursuant to the request of Cameron County and operating pursuant to Chapter 370 of the Texas Transportation Code (the "Code") and 43 TEX. ADMIN. CODE §§ 26.1 et seq. (the "RMA Rules"); and

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, planning, development, and implementation of public transportation infrastructure projects that promote public safety and facilitate the safe and efficient movement of traffic for the good of the people of Cameron County are governmental functions; and

WHEREAS, at a duly called and noticed meeting on December 29, 2015, the Commissioners Court of Cameron County (the "Commissioners Court"), pursuant to Section 222.107 of the Code, adopted an order (the "Adoption Order"), a true and correct copy of which is attached as Exhibit "A" hereto, authorizing the creation of "Transportation Reinvestment Zone Number Six, County of Cameron" (the "Zone"), to be effective immediately upon passage of the Adoption Order and authorizing the County to remit to the CCRMA a portion of incremental tax revenues collected by the County on property located in the Zone for use in funding the development of some or all of the transportation projects identified in the Adoption Order (the "Projects") and authorizing the County to enter into this Agreement; and

WHEREAS, the Adoption Order included the finding that the designation of the Zone will promote public safety, cultivate the improvement, development or redevelopment of property, facilitate the movement of traffic, and promote the development of some or all of the Projects; and

WHEREAS, the Adoption Order further provides that development of some or all of the Projects will provide benefits to, and throughout, the entire County and to its residents; and

WHEREAS, Section 370.303 of the Code authorizes the County to enter into and make payments under this Agreement in connection with the financing, acquisition, construction, or operation by the CCRMA of transportation projects such as the Projects; and

WHEREAS, Section 370.303 of the Code also authorizes the County to agree with the CCRMA in this Agreement to collect and remit to the CCRMA all or a portion of the incremental tax revenues collected by the County on property located in the Zone for purposes of developing transportation projects such as the Projects, and provide a means for the CCRMA to pledge or otherwise provide funds for the development of the Projects; and

WHEREAS, the Commissioners Court adopted the Adoption Order to acknowledge, consent to, and confirm that the CCRMA will, to the extent legally permissible, assign, pledge and transfer a portion of the tax increment from the Zone to fund contractual obligations of the CCRMA entered into in connection with the development of some or all of the Projects (the "Project Obligations"), and to authorize entering into this Agreement for such purpose.

NOW, THEREFORE, the County and the CCRMA, in consideration of the terms, conditions and covenants contained herein and other good and valuable consideration, and intending to be legally bound, hereby agree as follows:

#### I. DEFINITIONS

Terms not particularly defined herein shall be construed as defined in Section 222.107 of the Code. The following terms shall have the following meanings when used in this Agreement:

"Tax Increment" means the amount of property taxes levied and collected by the County for that year on the captured appraised value of real property taxable by the County and located in the Zone, which shall be deposited in the Tax Increment Account.

"Captured Appraised Value" of real property taxable by the County for a year is the total appraised value of all real property taxable by the County and located in the Zone for that year less the Tax Increment Base of the County.

"Interest and Sinking Funds rate" means the tax rate required to pay for the debt service on all of the County's outstanding ad valorem tax obligations. This tax rate in 2015 was \$0.045352.

"Maximum Annual Tax Increment Transfer" means an amount calculated annually and which equals the lesser of: (A) 25% of the Tax Increment (excluding amounts levied and collected at the Interest and Sinking Funds rate and excluding amounts levied and collected but which are subject to commitments of tax increment dedication pursuant to agreements entered into prior to the date of this Agreement), or (B) the amount shown on Exhibit "B" as the Maximum Annual Tax Increment Transfer Cap. By way of example, if in 2020 the Tax Increment (after the exclusions referenced above) equals \$17,000,000, the Maximum Annual Tax Increment Transfer would be 25% of that amount, or

\$4,250,000 (since that is less than the Maximum Annual Tax Increment Transfer Cap shown on Exhibit "B").

"Maximum Transfer Amount" means the cumulative total of Maximum Annual Tax Increment Transfers equal to \$1,625,954,462.

"Tax Increment Base" means the total appraised value of all real property taxable by the County and located in the Zone on January 1, 2015.

"Tax Increment Account" means an account established by the County pursuant to the Adoption Order, into which all the Tax Increment (as defined above) are to be deposited upon receipt by the County, as further described under Section 222.107 of the Code. The County's obligation to deposit Tax Increment payments into the Tax Increment Account shall accrue as the County collects and processes tax payments to determine how much of each payment goes to the payment of past due taxes and taxes attributable to the payment of the base year value described in this Agreement. The County shall not be obligated to transfer the Maximum Annual Tax Increment Transfer from any tax accounts that are classified as exempt due to ownership by exempt entities or from any non-Tax Increment revenue sources.

## II. AGREEMENTS BY THE COUNTY

The County hereby acknowledges, consents to, and agrees as follows:

A. The recitals of the Adoption Order are incorporated into this Agreement as if fully set forth herein.

B. The County shall deposit all of the Tax Increment, on an annual basis, into the Tax Increment Account.

C. The County hereby assigns, pledges, transfers and remits that portion of the Tax Increment in the Tax Increment Account for the Zone equal to the Maximum Annual Tax Increment Transfer to the CCRMA to fund costs of the development, acquisition, construction, maintenance, or operation of some or all of the Projects, which the County has determined will benefit the entire County and its residents. The remainder of the amount in the Tax Increment Account, after payment of the Maximum Annual Tax Increment Transfer, shall be available to the County for use as it may see fit.

D. The County hereby acknowledges and consents to the CCRMA's assignment, pledge and transfer of the revenue it receives from the Zone to secure and make payment of the Project Obligations to the extent legally permissible by law. For so long as this Agreement remains in effect and any of the Project Obligations are outstanding and unpaid or the Maximum Transfer Amount has not been exceeded, the County covenants and agrees to annually assess, levy and collect its ad valorem tax on property within the Zone and not to seek to terminate the Zone unless required under Article VII. Nothing in this Agreement requires the Commissioners Court to levy a tax on taxable property in the County at any minimum rate. The obligations of

the County to the CCRMA and the beneficial rights of the CCRMA to receive funding pursuant to this Agreement are subject to the rights of any of the holders of bonds, notes or other obligations that have heretofore or are hereafter issued by the County that are payable from or secured by a general levy of ad valorem taxes throughout the taxing jurisdiction of the County or committed to other governmental entities with pre-existing tax increment reinvestment zones and interlocal agreements with the County for securing project financing obligations.

E. The County hereby agrees that (i) the County shall deposit all of the Tax Increment into the Tax Increment Account on an annual basis and shall remit, without counterclaim or offset, the Maximum Annual Tax Increment Transfer to the CCRMA on or before December 31 of the following calendar year; and (ii) the County shall not seek to declare this Agreement void or ineffective, and shall not seek to rescind the Adoption Order (or modify it in any way that would adversely affect the CCRMA's assignment, pledge and transfer of the revenue from the Zone) or adopt any other resolution or order or take any other action to remove or rescind the revenue from the Zone, until the date on which the Zone is terminated pursuant to Article VII.

F. The obligations of the County to make the Maximum Annual Tax Increment Transfer payments set forth in this Agreement from the Tax Increment Account shall be absolute and unconditional, and until such time as all Project Obligations incurred as contemplated in this Agreement have been fully paid or provision for payment thereof shall have been made in accordance with its terms or the County has met the Maximum Transfer Amount, the County will not suspend or discontinue any payments provided for in this Agreement, will not, subject to Article VII, terminate the Zone and will not seek to terminate this Agreement for any reason whatsoever.

G. The County acknowledges that the amounts transferred pursuant to this Agreement will not fund the development of all of the Projects. Instead, the funding provided hereunder is intended to contribute to the development of some or all of the Projects, with additional funding to be provided from other sources identified in the finance plan provided by the CCRMA in connection with each Project to be constructed as set forth in Article III.B below. The County further acknowledges that any future agreements to dedicate tax increment or grant tax abatements will be subject to the commitments of this Agreement and any such future agreements may not diminish the amounts to be transferred pursuant to this Agreement.

### **III. AGREEMENTS BY THE CCRMA**

A. The CCRMA hereby agrees to diligently pursue development of the Projects for the benefit of the residents of the County.

B. The CCRMA hereby agrees to report at least annually on its progress on the advancement of the Projects to the Commissioners Court in accordance with requirements of the Code and the RMA Rules and to identify the Project Obligations which the amounts received from the County pursuant to this Agreement have been pledged to secure or pay. Prior to the expenditure of any funds received under this Agreement for the construction of a Project, the CCRMA will provide a project budget and finance plan to the County for the Project. In

addition, the CCRMA will direct the independent certified public accountant performing the annual financial and compliance audit required under the Code to include a review of the administration of this Agreement in its final report. Further, as part of the CCRMA's annual report to the Commissioners Court, the CCRMA will specifically report on the use of proceeds transferred pursuant to this Agreement; identify any additional Projects for which such proceeds are expected to be spent during the following year; and report the results of the independent certified public accountant annual financial and compliance audit required under the Code, including the independent auditor's review of the administration of this Agreement.

#### IV. ADMINISTRATION OF AGREEMENT

In keeping with the CCRMA's statutory purpose and the expertise that it brings to the planning, development and implementation of transportation infrastructure projects, the CCRMA shall be in charge of and agrees to diligently administer the day to day affairs of, exercise the day to day control over and otherwise attend to the administrative needs of the Projects. Any material changes to this Agreement shall be presented to the Commissioners Court and the CCRMA Board of Directors, respectively, for approval.

#### V. NOTICES

Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the consent, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to the party intended to receive it at the addresses shown below:

If intended for the County, to:

Cameron County  
1100 E. Monroe St.  
Brownsville, TX 78520  
Attn: County Judge

If intended for the CCRMA, to:

Cameron County Regional Mobility Authority  
3461 Carmen Ave.  
Rancho Viejo, TX 78575  
Attn: Chairman

with a copy to:

Commissioners Court  
Chief Legal Counsel  
1100 E. Monroe St.  
964 E. Harrison St.  
Brownsville, TX 78520

Locke Lord LLP  
600 Congress Avenue  
Suite 2200  
Austin, TX 78701  
Attn: C. Brian Cassidy

or to such other addresses as the parties may request, in writing, from time to time.

## **VI. GOVERNING LAW AND VENUE**

This Agreement is made subject to the provisions of the Texas constitution, codes, and statutes, and all other applicable state and federal laws, regulations and requirements, as amended. Venue shall lie exclusively in Cameron County, Texas.

## **VII. TERM**

This Agreement is effective as of December 29, 2015, and shall terminate upon the termination date of the Zone, which shall occur upon the earlier of: (A) the date that all outstanding Project Obligations have been satisfied and no additional Project Obligations are anticipated; (B) the Maximum Transfer Amount has been paid; or (C) December 29, 2065, unless such date is extended by agreement of the parties. Notwithstanding the foregoing, the obligations of the County to deposit to the Tax Increment Account Tax Increments which accrue during the term of the Zone, but which are not collected until subsequent to the expiration of the term, shall survive, such that the County will remit to the CCRMA the Maximum Annual Tax Increment Transfer attributable such amount. If, on the other hand, at the time of termination the CCRMA has any funds on hand that were transferred pursuant to this Agreement, and the funds are not needed or pledged with respect to any Project Obligations, the remaining funds will be returned to the County.

## **VIII. ENTIRE AGREEMENT/AMENDMENTS/SUCCESSORS AND ASSIGNS**

This Agreement embodies the complete understanding of the County and the CCRMA, superseding all oral or written previous and contemporary agreements between the parties relating to matters herein. This Agreement may be amended, modified, or supplemented only by an instrument in writing executed by the County and the CCRMA. Any alterations, additions or deletions to the terms of this Agreement required by changes in federal, state or local law or regulations will be automatically incorporated into this Agreement without written amendment, and shall become effective on the date designated by such law or regulation, and this Agreement will be amended from time to time as necessary to accommodate such changes in federal, state or local law or regulations for the benefit of all who deal with or are affected by this Agreement. This Agreement shall bind and benefit the respective Parties and their legal successors, and shall not be assignable, in whole or in part by either Party without first obtaining the consent of the other Party.

## **IX. AMENDMENTS AND MODIFICATIONS**

This Agreement may not be amended or modified except in writing executed by both the County and the CCRMA, and authorized by their respective governing bodies.

## **X. SEVERABILITY**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the

particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

#### **XI. EXECUTION IN COUNTERPARTS**

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date above first written, when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.


#### **XII. JOINT PREPARATION**

This Agreement has been prepared by both parties and their representatives.

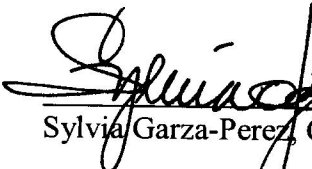



EXECUTED and effective as of the 29th day of December, 2015, by the County and the CCRMA.

CAMERON COUNTY, TEXAS

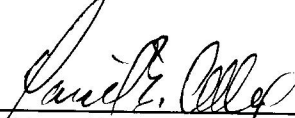
By:   
Alex Dominguez  
Cameron County Judge *Pro Tem*  
Commissioner, Precinct 2

ATTEST:

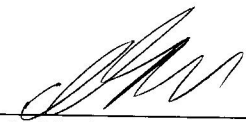
By:   
Sylvia Garza-Perez, County Clerk



CAMERON COUNTY REGIONAL  
MOBILITY AUTHORITY

By:   
David E. Allex, Chairman

ATTEST:

By:   
David N. Garza, Secretary

Attachments

**Exhibit A - Commissioner's Court Order No. 2015O12061**

**Exhibit B - Maximum Annual Tax Increment Transfer Cap Amounts**

EXHIBIT "A"  
ADOPTION ORDER