#### CITY CLERK DEPT.

#### 2016 JAN -6 PM 2: 15

# CITY OF EL PASO, TEXAS AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

**DEPARTMENT**: Capital Improvement Department

AGENDA DATE: January 12, 2016

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. Capital Improvement Director 212-1831

DISTRICT(S) AFFECTED: 8

#### SUBJECT:

A resolution that the City Manager be authorized to sign a Multipurpose Use Agreement between the State of Texas, by and between the Texas Department of Transportation, and the City of El Paso to permit the construction, maintenance and operation of a public streetcar project known as the El Paso Streetcar Project on the highway right of way IH 10 at the intersections of Oregon Street and Stanton Street in El Paso, Texas.

#### **BACKGROUND / DISCUSSION:**

The Texas Department of Transportation has indicated its willingness to approve the establishment of the El Paso Streetcar Project on the condition that the City will enter into Multiple Use Agreements for the purpose of determining the respective responsibilities of the City and the Texas Department of Transportation, and on the condition that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility. This agreement is required by the Texas Department of Transportation (TxDOT) to allow the city to construct, maintain and operate a public streetcar on TxDOT right-of-way. The agreement pertains to the locations on highway right of way IH 10 at the intersections of Oregon Street and Stanton Street.

#### **PRIOR COUNCIL ACTION:**

AMOUNT AND SOURCE OF FUNDING:

#### **BOARD / COMMISSION ACTION:**

N/A

**DEPARTMENT HEAD:** 

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

# CITY CLERK DEPT.

#### RESOLUTION

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WHEREAS, the Texas Department of Transportation has indicated its willingness to approve the establishment of the El Paso Streetcar Project on the condition that the City of El Paso will enter into agreements for the purpose of determining the respective responsibilities of the City of El Paso and the Texas Department of Transportation and on the condition that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility.

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Multipurpose Use Agreement between the State of Texas, by and between the Texas Department of Transportation, and the City of El Paso to permit the construction, maintenance and operation of a public streetcar project known as the El Paso Streetcar Project on the highway right of way IH 10 at the intersections of Oregon Street and Stanton Street in El Paso, Texas.

APPROVED AND AD	OPTED this	day of	, 2016.

THE CITY OF EL PASO

Oscar Leeser Mayor

ATTEST:

Richarda Duffy Momsen City Clerk

APPROVED AS TO FORM:

Theresa Cullen Deputy City Attorney

APPROVED AS TO CONTENT

Monica Lombraña, Director Capital Improvement Department

APPROVED AS TO CONTENT:

Jay Banasiak, Director Mass Transit Department CITY CLERK DEPT.





#### MULTIPLE USE AGREEMENT

STATE	OF	TEXAS	§
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#### COUNTY OF TRAVIS §

**THIS AGREEMENT** made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and The City of El Paso hereinafter called the "City", party of the second part, is to become effective when fully executed by both parties.

#### WITNESSETH

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_\_, the governing body for the City, entered into Resolution, hereinafter identified by reference, authorizing the City's participation in this agreement with the State; and

WHEREAS, the City has requested the State to permit the construction, maintenance and operation of a public streetcar project on the highway right of way of **IH 10** at the intersections of **Oregon Street** and **Stanton Street** in El Paso, Texas, referred to as the El Paso Streetcar Project. shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more depicted on Exhibit "B", which are attached and made a part hereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of the Streetcar Project conditioned that the City will enter into agreements with the state for the purpose of determining the respective responsibilities of the City and the State with reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the state.

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#### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

#### 1. DESIGN AND CONSTRUCTION

The City has provided the construction plans for the streetcar facility, and will provide for the construction work of the Streetcar Project as required by said plans. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, rail facilities, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. The plans shall also delineate and define the construction and maintenance responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State. Any sidewalks, curb ramps, and other pedestrian elements to be constructed, either on or off site, by the City shall be in accordance with the requirements of Title II of the Americans With Disabilities Act (ADA) and with the Texas Accessibility Standards (TAS). Elements constructed by the City and found not to comply with ADA or TAS shall be corrected at the entire expense of the City.

### 2. INSPECTION

Ingress and egress shall be allowed at all times to such streetcar facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

### 3. PARKING REGULATIONS

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for  $1^{1}/_{2}$  ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

### 4. **PROHIBITION/SIGNS**

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those

required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

## 5. **RESPONSIBILITIES**

Timely maintenance, repair and operation of the streetcar facility shall be entirely the responsibility of the City. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State, provided that nothing herein prohibits the City from obtaining the services of a contractor for the operation or for the maintenance of the streetcar facility after written notice thereof to the State. These responsibilities expressly include the timely maintenance and repair of any portion of the streetcar facility necessary to comply with the Americans with Disabilities Act. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the streetcar facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the streetcar facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

If the State determines that City has failed to comply with these responsibilities, it will perform the necessary work and charge City the actual cost of the work.

### 6. FEES

Any fees levied by the City for use of the streetcar facilities, other than streetcar fares, in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

A. Retention Period. The City shall maintain all books, documents, papers, accounting records and other evidence pertaining to fees, other than the streetcar fares collected and costs (hereinafter called the Records). The City shall make the records available during the term of the Agreement and for four years from the date the Agreement is terminated, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

B. Audit Report. If fees, other than the streetcar fares are collected by the City for the use of the streetcar facility under this agreement, the City will provide the State an annual audit report detailing the fees collected for the use of the streetcar facility and the costs associated with constructing, maintaining, and operating the streetcar facility within the same period. If the report shows more fees, other than the streetcar faces collected than expenses for the construction, operation, or maintenance of the streetcar facility the City must provide a multiple year plan detailing how the additional revenue will be used for construction, operation, or maintenance of the streetcar facility.

C. Availability. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General,

and the Comptroller General shall have access to the City's records that are directly pertinent to this Agreement for the purpose of making audits and examinations.

## 7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon written notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said streetcar facility shall immediately cease and terminate and City shall be responsible for the streetcar facility's timely removal at no cost to the State. If the State determines that City has not complied with the plan approved under Paragraph 10 to remove the streetcar facility, it will perform the necessary work and charge City the actual cost of the work.

## 8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the streetcar facility is impeding maintenance, damaging the highway facility, impairing safety or that the streetcar facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such streetcar facility is not in the public interest, this agreement under which the streetcar facility was constructed may be : (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the streetcar facility; or (2) terminated and the use of the area as proposed herein discontinued.

# 9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

# 10. RESTORATION OF AREA

The City shall provide written notification to the State that such streetcar facility will be discontinued for the purpose defined herein. The City shall, within thirty (30) days from the date of said notification or notification from the State of the termination of this agreement, provide a plan to clear the area of all streetcar facilities that were its construction responsibility under this agreement. Upon approval of the plan, the City must comply with the approved plan and restore the area **within thirty (30) months of the approved plan** to a condition satisfactory to the State.

# 11. PREVIOUS AGREEMENTS

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

## 12. INDEMNIFICATION

No party to this agreement intends to waive, relinquish, limit or condition its general governmental immunity from liability in any way.

Each party agrees and acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible only for its own acts and for those of its agents, servants, independent contractors or employees. Such responsibility includes, but is not limited to any claims or amounts arising or recovered under the "Workers Compensation Law," the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the City. Additionally, this agreement shall not ever be construed as relieving any third party from any liability in favor of the State and the City. Furthermore, the City shall become subrogated to the State's rights of recovery. Both, however, shall be entitled to maintain any action over and against any third party who may be liable for damages. Both parties agree to cooperate in the pursuit of any claims on behalf of the State or the City and to execute and deliver instruments and papers and to otherwise do that which is necessary to secure such rights.

#### 13. INSURANCE

The City shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance, repair and operation of the streetcar facility. Prior to beginning work on the State's right of way, the construction contractor of the City or the Camino Real Regional Mobility Authority shall submit to the State a completed insurance form (TxDOT Form No. 1560) or appropriate certificate of self-insurance and shall maintain the required coverage during the construction of the streetcar facility.

### 14. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

### 15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The City shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this

agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

### 16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

## 17. CIVIL RIGHTS ASSURANCES

The City, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said streetcar facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the City shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the streetcar facilities thereon, and hold the same as if said agreement had never been made or issued.

### 18. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

### 19. 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 invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

	CITY CLERK DEPT.
List of Attached Exhibits:	2016 JAN -6 PM 2: 16
Exhibit A – General Layout Exhibit B – Control Sheet and Plan and Exhibit C – Approved Construction Plan Exhibit D – Certificate of Insurance (TxD Exhibit E – Attachment A (FHWA Additio	s )OT Form 1560)
IN WITNESS WHEREOF, the parties ha	ave hereunto affixed their signature, the _ day of, 20, and the State
on the day of	, 20
City of El Paso, Texas (Name of other party) By: Title	STATE OF TEXAS Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.
Printed Name	By: Michael Lee, P.E. Director, Maintenance Division
Date	Printed Name
Contact Office and Telephone No.	Date
APPROVED AS TO FORM:	APPROVAL RECOMMENDED
Signature	District Engineer
Theresa Cullen	_
Printed Name	Robert Bielek, DPA, P.E
APPROVED AS TO CONTENT:	Printed Name
Signature	Date
Signature	_

12/8/15 15-1004-613/479618

#### 20. AUDIT

The State may conduct an audit or investigation of any aspect of this agreement. The City must provide the State with access to any information the State considers relevant to the investigation or audit. The audit can include, but is not limited to, any contract for construction or maintenance of any facility or structure authorized by this agreement or any contract to provide a service to the City if that service is authorized by this agreement.

#### 21. AUTHORITY OF STATE AUDITOR

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract 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.

#### 22. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

#### STATE

City of El Paso

Texas Department of Transportation Maintenance Division 125 East 11<sup>th</sup> Street Austin, Texas 78701-2483

City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

#### 23. TIMELY PAYMENT

When required by any provision of this agreement requires a payment to be made to the State, the other party hereto shall within **ninety (90) days** from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from the other party's construction, maintenance, repair or operation of the facility.

#### 24. WARRANTS

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

# EXHIBIT A GENERAL LAYOUT

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# EXHIBIT B CONTROL SHEET AND PLAN AND PROFILE SHEET

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# EXHIBIT C APPROVED CONSTRUCTION PLANS

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Plans will be delivered electronically by CD via standard mail and a copy of the CD will be filed with the fully executed Agreement.

# EXHIBIT D CERTIFICATE OF INSURANCE (TXDOT FORM 1560)

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Texas
our coartment

#### CERTIFICATE OF INSURANCE

Previous editions of this form may not t

Id complete the form providing all requested information then either fax or mail this form directly to the address listed on page two of this form onies of Agents s listed below are not required as attachments to this certificate. endorsen

sued as a matter of information only and confers no rights upon the certificate holder. This certificate does not confer any rights or obligation other than the ted as a matter of montation only and comers no rights apon the definitione inducer. This definitione upes not comer any rights of doing a conveyed by the policies referenced on this certificate. The terms of the policies referenced in this certificate control over the terms of the conveyed by the policies referenced on this certificate. ertificate. This certificate rights and obligation

Insured:

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Street/Mailing Addr

City/State/Zip:

Phone Number:

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# WORKERS' COMPENSATION USURANCE COVERAGE: Endorsed with a Waiver of Subrogation in favor of TxDOT.

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Carrier Name:			Carrier Phone #: (	-
Address:		<u></u>	City, State, Zip:	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation				Not Less Than: Statutory - Texas

#### COMMERCIAL GENERAL LIABILITY INSURAL

Carrier Name:			Carrier Phone #: (	) -
Address:			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Commercial General Liability Insurance	$\sim$		- m	Not Less Than: \$ 600,000 each occurrence
BUSINESS AUTOMOBILE F		LF-INS	URED 2	
		<del>m</del>	Carrier Phone #: (	) -
Carrier Name:			Chi, State, Zip:	
Address: Type of Insurance:	Policy Number:	Effective Date:	Exercitate, 219.	Limits of Liability:
Business Automobile Policy	T Only Humber			Not Less Than: \$ 600,000 combined single limit
·				
UMBRELLA POLICY (if app	plicable):		Carrier Phone #:	

	Carrier Phone #:	) -
Carrier Name:	City, State, Zip:	
Address: Effective Date:	Expiration Date:	Limits of Liability:

Type of Insurance:	Policy Multiper.	Lifective Date:			
Umbrella Policy			[		. <u></u>
Should any of the above described	I policie be cancelled before	e the expiration date thereof	, notice will be delivered in the State of Texas that the	accordance with the policy provision the insurance policies named are	ons. In full forc

THIS IS TO CERTIFY to the Texas department of Transportation acting on behalf of the State of Texas that the insurance policies named are in full force and effect. If this form is sent by acsimile machine (fax), the sender adopts the document received by TxDOT as a oscilicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

Agency Name	Address	, City, S	State, Zip Code
() - Authorizer Agent's Ph	none Number Authorized Ager	t Original Signature	Date

pepartment of Transportation maintains the information collected through this form. With few exceptions, you are entitled on reest to be bout the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled The Texas receive ew the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorre informe and re

Fax completed form to: 512/416-2536

#### TES TO AGENTS:

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gents must provide all requested information then either fax or mail this form directly to the address lister pelow.

Phyprinted limits are the minimum required; if higher limits are provided by the policy, enter the high relimit amount and trike-through or cross-out the pre-printed limit.

To avoid work suspension, an updated insurance form must reach the address listed below the business day prior to the expiration date. Insurance must be in force in order to perform any work.

#### Binder numers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on his form.

List the contractor's egal company name, including the DBA (doing business as) plane as the insured. If a staff leasing service is providing insurance to the contractor/client company, list the staff leasing service as the insured and show the contractor lient company in parenthesis.

The TxDOT certificate of instrance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing businesses) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing encies on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manuer.

This form may be reproduced.

DO NOT COMPLETE THIS FORM UNLESS THE WORKERS' COMPENSATION POLICY IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF XDOT.

The SIGNATURE of the agent is required

CERTIFICATE OF INSURANCE REQUIREMENTS

# WORKERS' COMPENSATION INSURANCE SELF - INSURED

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability means that the asurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURATCE is not an acceptable substitute for Workers' Compensation.

#### COMMERCIAL GENERAL LIABILITY INSULANCE:

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

#### BUSINESS AUTOMOBILE POLICY

If coverages are specified separately, they must be at least these amounts:

Bodily <sup>1</sup> Jury Proterty Damage \$500,000 each occurrence \$100,000 each occurrence \$100,000 for aggregate

PRIVATE AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for a Business Automobile Policy.

#### MAIL ALL CERTIFICATES TO:

Texas Department of Transportation CST—Contract Processing Unit (RA/200—1st FL) 125 E. 11th Street Austin, TX 78701-2483 512/416-2540 (Voice), 512/416-2536 (Fax)

Exhibit D - Page 2

# EXHIBIT E ATTACHMENT A (FHWA ADDITIONAL REQUIREMENTS)

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## ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.

- Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
- Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.

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- The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
- 4. This agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.