

# **CAMINO REAL REGIONAL MOBILITY AUTHORITY BOARD RESOLUTION**

**WHEREAS**, the Camino Real Regional Mobility Authority (CRRMA) has entered into various agreements with El Paso County (County), whereby the CRRMA utilized the proceeds of an optional vehicle registration fee (VRF) imposed by the County to issue bonds for the development of transportation projects in the County; and

**WHEREAS**, the County and CRRMA are parties to the 2013 El Paso County Comprehensive Mobility Plan, which anticipates the use of the referenced VRF bond proceeds, among other funding sources, for the development of various projects; and

**WHEREAS**, the County and CRRMA desire to enter into an additional agreement to expressly allow for the CRRMA to fund the County's construction of the Greg/Edgemere Roadway Project from the referenced VRF bond proceeds.

**NOW, THEREFORE, BE IT RESOLVED BY THE CAMINO REAL REGIONAL MOBILITY AUTHORITY:**

**THAT** the CRRMA's Vice Chair is authorized to execute an Interlocal Agreement for the Greg/Edgemere Roadway Project with the County of El Paso, Texas as it relates to the use of Vehicle Registration Fee bond proceeds.

**PASSED AND APPROVED THIS 10<sup>TH</sup> DAY OF FEBRUARY 2016.**

**CAMINO REAL REGIONAL  
MOBILITY AUTHORITY**

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Joe D. Wardy, Vice Chair

**ATTEST:**

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Susan A. Melendez, Board Secretary

**APPROVED AS TO CONTENT:**

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Raymond L. Telles  
Executive Director

**INTERLOCAL AGREEMENT  
VRF PROJECT DEVELOPMENT AGREEMENT FOR  
THE GREG/EDGEMERE ROADWAY PROJECT**

**THIS INTERLOCAL AGREEMENT** (the “Agreement”) is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2016, by and between EL PASO COUNTY, TEXAS (the “County”) and the CAMINO REAL REGIONAL MOBILITY AUTHORITY (“Authority”), (collectively, the “Parties”), for the purposes described herein.

**WITNESSETH:**

**WHEREAS**, the County is a political subdivision of the State of Texas; and

**WHEREAS**, the Authority is a regional mobility authority created pursuant to the request of the City of El Paso and operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE §§26.1 *et seq.* and is a body politic and corporate and political subdivision of the State; 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**, the County is authorized to impose an additional fee, not to exceed \$10.00, for vehicles registered in the County (the “Special Vehicle Registration Fee” or “VRF”) pursuant to Section 502.402 of the Texas Transportation Code (“Section 502.402”); and

**WHEREAS**, on August 30, 2013, the Commissioners Court of the County ordered the adoption and imposition of the Special Vehicle Registration Fee; and

**WHEREAS**, Section 502.402 requires that, if adopted, the County remit the revenue collected from the Special Vehicle Registration Fee to a regional mobility authority located in the County to fund long-term transportation projects; and

**WHEREAS**, Section 370.033 of the RMA Act permits the Authority to enter into an agreement under which the Authority may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity if the transportation project is located in the Authority's area of jurisdiction or in a county adjacent to the Authority's area of jurisdiction; and

**WHEREAS**, the County has entered into an Interlocal Agreement dated December 16, 2013, and a Transportation Project and Pledge Agreement dated April 9, 2014 with the Authority wherein the County has agreed to transfer all Special Vehicle Registration Fees to the Authority and the Authority has agreed to use those funds, and such other funds which may be designated by the County from time to time, to finance and pay for the construction of certain County designated transportation projects within El Paso County and that certain transportation project described in **EXHIBIT A** (the “Project”); and

**WHEREAS**, the Project is located in El Paso County which is within or adjacent to the Authority's area of jurisdiction; and

**WHEREAS**, the County and Authority have determined that it is in the best interests of both Parties that the County continue developing the Project, including through the use of a Developer Participation Agreement and that the Authority provide the funding necessary for the Project from the proceeds of the bonds issued from the Special Vehicle Registration Fee pledge referenced above; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the undersigned Parties agree as follows:

## **I. FINDINGS**

1. **Recitals.** The recitals set forth above are incorporated into this Agreement for all purposes and are found by the Parties to be true and correct. It is further found and determined that the Parties have authorized and approved the Agreement by resolution or order adopted by their respective governing bodies, and that this Agreement will be in full force and effect when approved by both parties.

2. **Overview of the Project.** The Texas Department of Transportation ("TxDOT"), the El Paso Metropolitan Planning Organization ("EPMPO"), the County and the Authority are each parties to the 2013 El Paso County Comprehensive Mobility Plan (the "2013 CMP"). The 2013 CMP is a list of high-priority, long-term transportation projects that the 2013 CMP parties have agreed to cooperatively develop, due to the mutual benefit to each party and due to the benefits of the projects to the residents of the County. Pursuant to the 2013 CMP, the County implemented the Special Vehicle Registration Fee and subsequently assigned such revenues to the Authority for use as a repayment source for the issuance of debt for the advancement and development of various 2013 CMP projects. The Authority utilized the County pledge of VRF to issue revenue bonds and as of the execution of this Agreement the Authority holds \$72,000,000 in bond proceeds for the development of certain 2013 CMP projects, including the "Project" as that term is more specifically enumerated in **EXHIBIT A** to this Agreement. The project scope and responsibilities of each party for the development of the Project are more fully enumerated within **EXHIBITS B** and **C** to this Agreement.

## **II. DUTIES AND RESPONSIBILITIES OF THE PARTIES**

1. **Project Development Services and Payment.** Subject to the terms of this Agreement, the Authority agrees and is hereby authorized to use the Special Vehicle Registration funds, or the proceeds of any debt incurred from a pledge of such funds or such other lawfully available funds designated from time to time, to provide the County with all or a portion of the funding necessary for the development, design and construction of the Project identified in **EXHIBIT A**. Specifically, the Authority shall make the funds identified in this Agreement available to the County for the County's use in the development of the Project

**A. Timeline for Commencement and Completion of Work.** Project Commencement shall be designated as same date as the Effective Date shown above. . Project-related services, including any applicable phasing of such work, will be completed in accordance with the schedule developed between the County, the County-designated developer and the Authority.

**B. Scope of Work.** Specific elements of the work required for the project and the responsible party for the performance of such work are set forth in **EXHIBIT B** to this Agreement. Such services will be provided by the appropriate party within the jointly developed schedule referenced in subparagraph 1.A. above.

**C. Project Budget.** The initial project budget, for the Project is set forth in **EXHIBIT C** to this Agreement (“Project Budget”). The Parties will work together and in conjunction with the County-designated developer to attempt to minimize the actual costs as reflected in the Project Budget, and in no event shall the cash disbursements by the Authority exceed such Project Budget, absent the written agreement of the Parties.

**2. County and Developer Participation Agreement Terms.** As required by this Agreement, the County will, pursuant to Texas Local Government Code Section 232.105, enter into a Developer Participation Agreement, or such other agreement as may be required (the “DPA”), with a County-designated developer (the “Developer”) for the Project identified in **EXHIBIT A**. The County shall include the following provisions, or substantially similar provisions that are acceptable to the Developer, into the DPA:

**A. Inspections.** The County and the Authority, including their authorized representatives, may observe or inspect all work done and materials furnished for the Project at reasonable times and places. If either Party believes the Project is not being constructed as originally contemplated, the Parties’ designated representatives shall meet with the Developer to discuss appropriate actions to ensure that any defects in the Project or deviations from approved Project designs are remedied.

**B. Budget Overruns.** In the event the costs of the Project exceed, or due to a change in circumstances during development of such Project are expected to exceed, the amount specified in the Project Budget and other lawfully available and designated funds, the Parties and the Developer, through their respective designated representatives, will work together to identify the additional funding necessary for the Project. In the event additional funds cannot be identified to address such increased costs, the Parties and the Developer shall work together to amend the scope of the Project to fit within the available funds or to otherwise address the Project funding shortfall.

**C. Change Order.** Change Order shall mean a written order to the Developer executed by the County after execution of the DPA, directing a change in the work to be performed on the Project, and may include a change in the contract price or the time for the Developer’s performance or any combination thereof. A Change Order requested by the Developer, which would result in an increase in the Project Budget, must be approved by the Authority and the County in writing prior to creating an enforceable commitment of VRF or other lawfully available and designated fund proceeds. A proposed Change Order requested by

the Developer shall be provided to the Authority and the County in writing and include detailed justification for the requested change(s). The County may approve a Change Order without the approval of Authority if the County agrees to pay the increased cost of the Project from its own funding source.

**D. Final Acceptance.** The County shall notify the Authority in writing upon Final Acceptance of the Project. To the extent required by the DPA, and upon Final Acceptance of the Project, the County will retain all contractor warranties, guarantees, and bonds which it possesses with respect to such Project and which extend beyond the date of such Final Acceptance. Unless otherwise agreed by the Authority, the Authority shall have no further obligation with respect to the Project after Final Acceptance.

**3. Reports to the Authority.** The County shall, at such times and in such form as the Authority may reasonably request, furnish periodic information concerning the status of the Project and the performance of the County's obligations under this Agreement. To the extent requested by the Authority, the County shall make an annual report to Authority's Designated Representative on the Project. Such annual report shall include information on the current construction and financial status of the Project.

**4. Accounting.** The County shall use diligence to insure that each distribution of Project funds to the Developer is for its proper and documented expenditures. Complete books and records shall be maintained by the County of disbursements for payments required in this Agreement. All such books and records shall be deemed complete if kept in accordance with the Governmental Accounting Standards Board's principles and. Such books and records shall be available for examination by the duly authorized officers or agents of the Authority during normal business hours upon request made not less than five (5) business days prior to the date of such examination. In addition, the County shall coordinate with the Authority to provide information and documentation necessary for the Authority to complete its annual books, records and reports for each fiscal year ending August 31st during which: (1) Project funds are/were distributed for the Project; (2) Project warranties are/were in effect; and/or Project claims are/were outstanding.

**5. Limitations on Project Development.** Notwithstanding anything else in this Agreement to the contrary, the County shall not be obligated to pursue or complete development of the Project if the funds available from this Agreement together with other lawfully available and designated funds are insufficient to pay all costs associated with the Project and the County desires not to provide additional funding to cover the amount of any such deficiency.

### **III.**

#### **PARTY REPRESENTATIVES AND LEGAL NOTICES**

**1. Party Representatives.** The designated representatives authorized to act on behalf of each party hereto, and the addresses to which notices due hereunder should be directed, are as follows, unless and until either party is otherwise notified in writing by the other party:

**County:**

**Authority:**

Director of Public Works  
800 E. Overland, Room 407  
El Paso, Texas 79901

Executive Director  
300 N. Campbell, 2<sup>nd</sup> Floor  
El Paso, Texas 79901.

**2. Limitations on County Representative.** Notwithstanding anything contained in this Agreement to the contrary, approval of the initial Project Budget, changes to the funding source(s), change orders that increase the Project Budget, and all amendments to this Agreement shall require the action of Commissioners Court.

**3. Legal Notices:** Any and all notices and communications under this Agreement shall be in writing and mailed by first-class mail, or hand delivered, addressed to the following designated officials:

**County:**

El Paso County Judge  
500 E. San Antonio, Room 301  
El Paso, Texas 79901  
With copies to:

Director of Public Works  
800 E. Overland, Room 407  
El Paso, Texas 79901

**Authority:**

Executive Director  
300 N. Campbell, 2<sup>nd</sup> Floor  
El Paso, Texas 79901

Locke Lord, LLP  
Attn: C. Brian Cassidy  
600 Congress Ave., Ste. 2200  
Austin, Texas 78701.

**IV.  
TERM AND TERMINATION**

**1. Term and Termination.** Subject to the following, this Agreement shall be effective as of the effective date first written above and shall continue in full force and effect until the completion of the services to be provided. Notwithstanding the foregoing, and without limitation on any other remedy identified in the Agreement or available at law or in equity:

**A.** either party may terminate this Agreement in the event of a material breach of its terms, which may include, but is not limited to, failure to make timely payments of amounts owed and failure of services to be provided in accordance with this Agreement, provided that the party seeking to terminate the Agreement has provided written notice to the other of the alleged default and the default has not been cured within thirty (30) days of receipt of such notice; and

**B.** the parties may mutually agree to terminate this Agreement.

**V.  
GENERAL AND MISCELLANEOUS**

**1. Waiver.** Neither this Agreement nor any of the terms may be waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the waiver or modification shall be sought. No failure or delay of any Party, in any one or more

instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation of, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise of or insistence upon or the exercise of any other right, power or remedy

**2. Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

**3. Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**4. Amendments and Modifications.** This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

**5. Venue.** For any and all disputes arising under this Agreement, venue shall be in El Paso County, Texas.

**6. Successors and Assigns.** This Agreement shall bind and benefit the respective Parties and their legal successors, and shall not be assignable, in whole or in part, by any Party without first obtaining the written consent of the other Party.

**7. 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(s), 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.

**8. 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 first written above, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

**EL PASO COUNTY, TEXAS**

**CAMINO REAL REGIONAL  
MOBILITY AUTHORITY**

By: \_\_\_\_\_  
**Veronica Escobar**  
**County Judge**

By: \_\_\_\_\_  
**Joe D. Wardy**  
**Vice Chair**

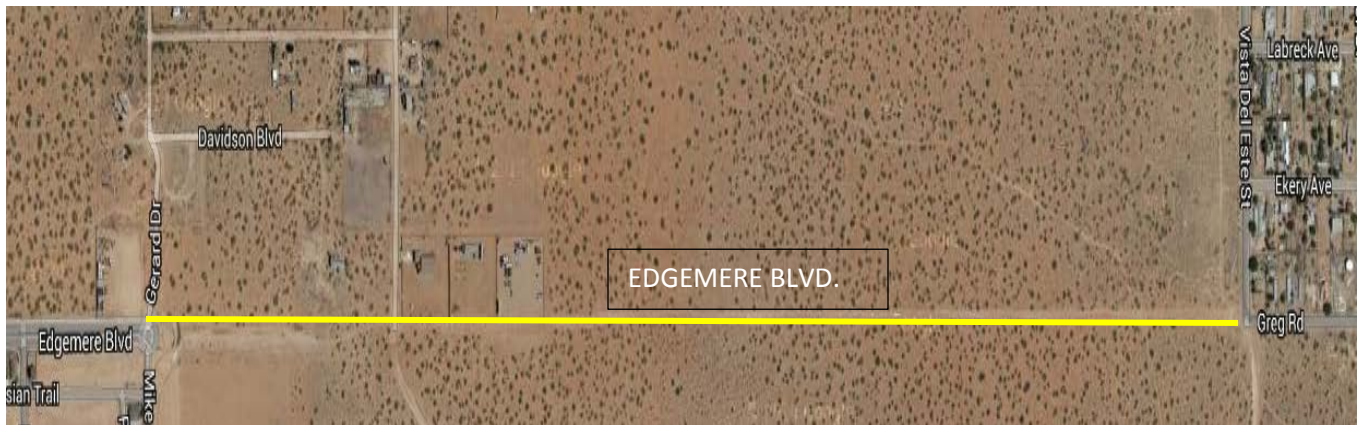


## EXHIBIT “A”

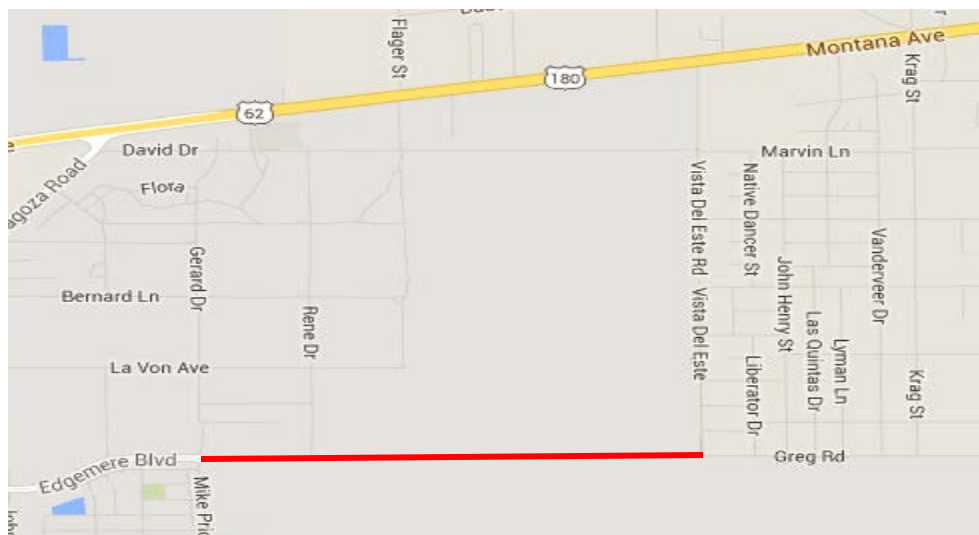
### GREG/EDGEMERE ROADWAY PROJECT PROJECT DESCRIPTION

The proposed work consists of constructing a 4 lane divided roadway to include asphalt pavement, raised median, curbs, sidewalks, bike lanes, ADA ramps, illumination, signing and striping. Project Limits are from Mager Dr./Tim Floyd to Vista del Este St.

### PROJECT LIMITS



### VICINITY MAP



## **EXHIBIT “B”**

### **GREG/EDGEMERE ROADWAY PROJECT PARTY RESPONSIBILITIES**

- 1. PLANNING:** County - complete;
- 2. DESIGN:** County - complete;
- 3. DEVELOPMENT:** County - complete;
- 4. ENVIRONMENTAL PERMITTING:** County;
- 5. RIGHT-OF-WAY ACQUISITION:** County;
- 6. PROCUREMENT:** County;
- 7. CONSTRUCTION:** County, per a Developer Participation Agreement;
- 8. FINANCIAL OBLIGATIONS:** CRRMA Senior Bond VRF Revenue Bonds, Series 2014;
- 9. REPORTING:** County;
- 10. PERFORMANCE STANDARDS:** County;
- 11. MARKETING AND PUBLIC OUTREACH:** None;
- 12. THIRD PARTY CONTRACTING:** None;
- 13. Other:** None.

## **EXHIBIT “C”**

### **GREG/EDGEMERE ROADWAY PROJECT PROJECT BUDGET**

<b>DESCRIPTION</b>	<b>TOTAL ESTIMATED COST</b>	<b>CRRMA PAYS WITH VRF BOND \$</b>	<b>COUNTY PAYS WITH OTHER FUNDS</b>
LAND	\$0	\$0	\$0
UTILITY RELOCATION	\$0	\$0	\$0
RAIL ROAD PERMIT & SERVICES	\$0	\$0	\$0
ENVIRONMENTAL	\$0	\$0	\$0
PRELIMINARY ENGINEERING	\$0	\$0	\$0
CONSTRUCTION	\$2,475,819.14	\$2,475,819.14	\$0
MISCELLANEOUS	\$0	\$0	\$0
<b>TOTAL</b>	<b>\$2,475,819.14</b>	<b>\$2,475,819.14</b>	<b>\$0</b>