

**CAMINO REAL REGIONAL MOBILITY AUTHORITY
BOARD RESOLUTION**

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is developing a transportation project known locally as the El Paso Streetcar Project (the “Streetcar Project”), which includes the design and construction of a streetcar route and associated amenities along a 4.8 mile corridor in El Paso; and

WHEREAS, the City of El Paso (the “City”), is developing downtown infrastructure improvements that are planned for construction after the scheduled completion of the Streetcar Project, portions of which are located within the Streetcar Project limits (the “CBD4 Project”); and

WHEREAS, the City desires the completion of the portions of the CBD4 Project that are within the Streetcar Project be completed while the CRRMA is developing the Streetcar Project to minimize disruption to the public; and

WHEREAS, the parties desire that the CRRMA’s Streetcar Project contractor complete the CBD4 Project work during the development of the Streetcar Project, using funding from the City for such improvements.

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 with the City of El Paso, as it relates to the development of certain infrastructure improvements as part of the El Paso Streetcar Project.

PASSED AND APPROVED THIS 9TH DAY OF DECEMBER, 2015.

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

ATTEST:

Joe D. Wardy, Vice Chair

Susan A. Melendez, Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

AGREEMENT

1. Time Period Covered

This Agreement becomes effective upon the date first written above, and the CRRMA and the City will consider it to be in full force and effect until the CBD4 Project described in **ATTACHMENT A** of this Agreement has been completed and accepted or unless terminated, as provided herein.

The CRRMA shall notify the City in writing upon final acceptance of the CBD4 Project construction. At such time, the CRRMA will assign to the City in a form approved by the City Attorney's Office all contractor warranties, guarantees, and bonds which the CRRMA possesses with respect to the CBD4 Project and which extend beyond the date of such final acceptance. Unless otherwise agreed by the CRRMA, the CRRMA shall have no further obligation with respect to the Project after final acceptance.

2. Project Funding and Work Responsibilities

At the request of the City, the CRRMA included the plans, specifications and engineering estimates ("PS&E") developed by the City and its consultants for the CBD4 Project into the Streetcar Project procurement process. Pursuant to and in accordance with such procurement process, the CRRMA has selected an apparent best value proposer that is authorized to develop those CBD4 Project items of work that the City has requested and as described in **ATTACHMENT A** and that the City has agreed to pay for as described in **ATTACHMENT B**, both of which are attached to and made a part of this Agreement. In addition to identifying those items of work to be paid for by the City to the CRRMA, **ATTACHMENT B** also specifies those CBD4 Project items of work that remain the responsibility of City and will be carried out and completed by the City. The City shall be responsible for costs that are shown on **ATTACHMENT C**, which is also attached to and made a part of this Agreement.

3. Termination

This Agreement may be terminated in the following manner:

- A. By mutual written agreement and consent of both Parties; or
- B. By either Party upon the failure of the other Party to fulfill the obligations set forth in this Agreement.

If the Agreement is terminated in accordance with the above provisions, the City will be responsible for the payment of CBD4 Project costs incurred by the CRRMA on behalf of the City up to the time of termination.

4. Right of Access

If the City is the owner of any part of the CBD4 Project site, the City shall permit the CRRMA or its authorized representative access to the site to perform any activities required to execute the work.

5. Adjustments Outside the Streetcar Project Site

The City will provide for all necessary right of way needed for performance of the work on sites not owned or to be acquired by the CRRMA as part of the Streetcar Project.

6. Responsibilities of the Parties

Both Parties acknowledge that neither is an agent, servant, employee of the other, nor are the Parties engaged in a joint enterprise, and each Party is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work on the CBD4 Project.

7. 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 Party 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.

8. Sole Agreement

In the event the terms of this Agreement are in conflict with the provisions of any other existing agreements between the City and the CRRMA, this Agreement shall take precedence over the other agreements in matters related to the CBD4 Project.

9. Successors and Assigns

The CRRMA and City each binds itself, its successors, executors, assigns, and administrators to the other Party to this Agreement and to the successors, executors, assigns, and administrators of such other Party in respect to all covenants of this Agreement.

10. Amendments

This agreement may be amended or modified upon the mutual written agreement of both parties.

11. Inspection and Conduct of Work

Unless otherwise specifically stated in **ATTACHMENT B** to this Agreement, the CRRMA will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the CBD4 Project is accomplished in accordance with the approved PS&E documents provided by the City (and its consultants). The City and its authorized representatives may observe or inspect all work done and materials furnished for the CBD4 Project at reasonable times and places. If either Party believes the CBD4 Project is not being constructed as originally contemplated, the Parties' designated representatives shall meet to discuss appropriate actions to ensure that any defects in the CBD4 Project or deviations from Project designs are remedied. All correspondence and instructions to the CRRMA's selected Streetcar Project contractor performing the work will be the sole responsibility of the CRRMA.

12. Maintenance

Upon completion and final acceptance of the CBD4 Project by the City and the CRRMA, the City will assume responsibility for the maintenance of the completed CBD4 Project improvements unless otherwise specified in **ATTACHMENT B** to this Agreement.

13. Notices

All notices to either Party by the other required under this Agreement shall be delivered by hand-delivery or sent by certified or U.S. mail, postage prepaid, addressed to such Party at the following addresses:

CITY OF EL PASO

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

CRRMA

Camino Real Regional Mobility Authority
300 N. Campbell, 2nd Floor
El Paso, Texas 79901
Attn: Executive Director

All notices shall be effective upon receipt. Either Party may change the above address by sending written notice of the change to the other. Either Party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other.

14. 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.

15. Venue

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

16. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

IN WITNESS WHEREOF, the CRRMA and City have executed this Agreement as of the date first written above.

CITY OF EL PASO

Oscar Leeser
Mayor

APPROVED AS TO FORM:

Brie L. Franco
Assistant City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña, A.A.E., Director
Capital Improvement Department

**CAMINO REAL
REGIONAL MOBILITY AUTHORITY**

Joe D. Wardy
Vice Chair

**ATTACHMENT A
SCOPE OF WORK – CBD4 PROJECT**

**City of El Paso
Street Car Kansas Street and Father Rahm Avenue Roadway Improvements**

Kansas Street

Limits: Paisano Dr. to Father Rahm Ave.

Scope of Work:

Roadway Improvements

The work generally consists of, but not limited to removal and off-site disposal of asphaltic concrete pavement, concrete bus pads, concrete curb and gutter. Construction of new rigid concrete pavement, concrete curb and gutter, concrete bus pads, traffic striping, adjustment of existing signal heads, storm sewer infrastructure, Storm Water Pollution Prevention, Trench Safety System for drainage improvements, traffic control for construction activities.

Parkway Improvements

The work generally consists of, but not limited to removal and off-site disposal of concrete sidewalks, concrete curb ramps, concrete driveways, adjust parking meter poles, and miscellaneous concrete removal within the existing Right-of-Way limits. Construction of new concrete sidewalks, concrete driveways, concrete curb ramps, loose rock aggregate, and Storm Water Pollution Prevention, and traffic control for construction activities.

Father Rahm Avenue

Limits: Kansas St. to Santa Fe St.

Scope of Work:

Roadway Improvements

The work generally consists of, but not limited to removal and off-site disposal of asphaltic concrete pavement, concrete bus pads, concrete curb and gutter. Construction of subgrade, flexible base course, hot mix asphaltic concrete pavement, rigid concrete pavement, concrete curb and gutter, concrete bus pads, traffic striping, storm sewer infrastructure, Storm Water Pollution Prevention, Trench Safety System for drainage improvements, and traffic control for construction activities.

Parkway Improvements

The work generally consists of, but not limited to removal and off-site disposal of concrete sidewalks, concrete curb ramps, concrete driveways, adjust parking meter poles, and miscellaneous concrete removal within the existing Right-of-Way limits. Construction of new concrete sidewalks, concrete driveways, concrete curb ramps, loose rock aggregate, and Storm Water Pollution Prevention, and traffic control for construction activities.

ATTACHMENT B
PAYMENT PROVISION AND WORK RESPONSIBILITIES

1. Description of the Work Items

The Parties agree that the street improvements identified as the CBD4 Project improvements and described in **ATTACHMENT A** shall be owned, operated, and maintained by the City from and after completion and final acceptance by the CRRMA and City. The estimated total construction cost for the proposed work is identified in **ATTACHMENT C**. The Parties agree that it is their intent to complete the improvements within this estimate of cost.

2. Actual Cost Agreement

All the costs associated with construction of the street improvements for the CBD4 Project shall be provided as defined within this **ATTACHMENT B**.

3. Schedule of Payments

- A. The amount to be paid by the City is estimated to be **\$2,231,958.15** (See **ATTACHMENT C**). Payments shall be made by the City to the CRRMA in accordance with the following schedule:

<u>\$1,115,979.08</u>	upon 10 business days of execution of the Interlocal Agreement;
<u>\$557,989.54</u>	upon 25% of CRRMA payment to the Streetcar contractor; and
<u>\$557,989.53</u>	upon 50% of CRRMA payment to the Streetcar contractor.

- B. In the event the CRRMA determines that additional funding is required by the City at any time during the completion of the CBD4 Project, the CRRMA will notify the City in writing. The CRRMA shall not be obligated to pursue or complete development of the Project, if funds in addition to those in **Exhibit C** are identified by the CRRMA as needed and not provided by the City.
- C. Whenever funds are made available by the City to the CRRMA under this Agreement, the CRRMA shall keep such funds separate and apart from the Streetcar Project funds, allowing for separate accounting. Funds provided to the CRRMA pursuant to this Agreement may only be applied by the CRRMA to the CBD4 Project.
- D. Upon completion of the Streetcar Project, the CRRMA will perform an audit of all project costs. Any funds due by the City or the CRRMA will be promptly paid by the owing party. The CRRMA shall also allow the City or its agents reasonable access to any records and accounting related to project costs for purposes of verifying all project costs.

4. Work Responsibilities

- A. The City shall provide the following services under this Agreement:
- i. Secure all necessary permitting as may be required for construction of the CBD4 Project.
 - ii. Arrange and coordinate with the CRRMA for any modifications or revisions to the PS&E developed by the City of its consultants for the CBD4 Project.
 - iii. Cooperate with the CRRMA for any information or coordination required from the City.
 - iv. Participate in interim and final inspections of the CBD4 Project performed by the CRRMA.
 - v. Assume all responsibility for the maintenance of the CBD4 Project upon completion and final acceptance

by the City and CRRMA of the construction activities.

- B. The CRRMA shall provide the following services under this Agreement:
- i. Combine the CBD4 Project plans with the plans prepared for the Streetcar Project.
 - ii. Review and approve the final construction plans prior to any construction-related activities.
 - iii. Inspect construction of the CBD4 Project.
 - iv. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Streetcar and CBD4 Projects.
 - v. Negotiate and administer all field changes and change orders required for the CBD4 Project.
All change orders increasing construction costs for the CBD4 Project shall be submitted to City for review and approval together with an evaluation. The City agrees to review and either approve or disapprove all change orders within five (5) business days after receipt of such order unless City Council approval is necessary in which case the City shall bring the item to City Council as soon as reasonably possible.
 - vi. Provide overall project management to supervise the day-to-day activities of the construction and monitor the activities of the contractor to promote the timely and efficient completion of the CBD4 Project in accordance with the approved Plans and Specifications and construction schedule.
 - vii. Conduct field observations and coordinate with the contractor to cure defects and deficiencies in the CBD4 Project construction prior to final acceptance.
 - viii. Make timely payment to the contractor for work performed in connection with the Project.
 - ix. Ensure access and permit authorized City representatives to observe the construction at all times.
 - x. Conduct and coordinate final inspection of the CBD4 Project in the presence of City representatives.
 - xi. Maintain and provide the City with a copy of the job file for the City of El Paso Streetcar Infrastructure Project, which will include the CBD4 Project, upon completion of the CRRMA of the construction activities for the Streetcar Infrastructure Project. However, if questions arise regarding the CBD4 Project, the CRRMA will work with the City to provide the requested documentation maintained in the job file.

[END OF ATTACHMENT]

ATTACHMENT C
ESTIMATED CITY COSTS

The following amount is due and payable according to the schedule of payments in **ATTACHMENT B** for the City's costs associated with the CBD4 Project.

Total Estimated Construction Costs -	\$2,047,668.03
3% CRRMA Administration -	\$61,430.04
6% CRRMA Inspection -	<u>\$122,860.08</u>
Amount of total City Costs -	\$2,231,958.15

[END OF ATTACHMENT]