

**CAMINO REAL REGIONAL MOBILITY AUTHORITY
BOARD RESOLUTION**

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is currently engaged in the development of a project known as the Americas Managed Lanes Project, which anticipates the implementation of various improvements to Loop 375 near the Zaragoza Port of Entry, some of which are expressly intended to improve the access to and from such port of entry; and

WHEREAS, the City of El Paso (City) is developing a transportation project that would also help to improve the ingress and egress options for the Zaragoza Port of Entry by improving Winn Road from Pan American to the Border Safety Inspection Facility at the port (the “Winn Road Project”); and

WHEREAS, the City and CRRMA agree that it is more efficient and therefore beneficial to the Parties and the traveling public for the CRRMA to complete the Winn Road Project, while the CRRMA pursues the Americas Managed Lanes Project; and

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 the Winn Road 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

COUNTY OF EL PASO)
)
STATE OF TEXAS)

**INTERLOCAL AGREEMENT FOR THE
DEVELOPMENT OF WINN ROAD**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made and entered into as of the ___ day of _____, 2015, by and between the **CITY OF EL PASO, TEXAS** (the “City”) and the **CAMINO REAL REGIONAL MOBILITY AUTHORITY** (the “CRRMA”), each to be referred to herein individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the City is a Home Rule City operating pursuant to the laws of the State of Texas; and

WHEREAS, the CRRMA is a regional mobility authority created and operating pursuant to Chapter 370 of the Texas Transportation Code 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, Section 370.033 of the Texas Transportation Code permits the CRRMA to enter into an agreement under which the CRRMA 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 CRRMA’s area of jurisdiction or in a county adjacent to the CRRMA’s area of jurisdiction; and

WHEREAS, the CRRMA is developing a project known as the Americas Managed Lanes Project, which will study improvements to Loop 375 near the Zaragoza Port of Entry (the “Zaragoza POE”), some of which are expressly intended to improve the access to and from Zaragoza POE; and

WHEREAS, the City desires to improve the ingress and egress options for the Zaragoza POE by improving Winn Road from Pan American to the Zaragoza POE and associated roadway improvements (the “Project”); and

WHEREAS, the Project is located within or adjacent to the CRRMA’s area of jurisdiction, and the Parties agree that it is more efficient and therefore beneficial to the Parties and the traveling public for the CRRMA to complete the Project, along with the Americas Managed Lanes Project; and

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

**ARTICLE I.
FINDINGS**

A. Recitals. The recitals set forth above are incorporated herein 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 this Agreement by resolution or action adopted by their respective governing bodies.

**ARTICLE II.
DUTIES AND RESPONSIBILITIES OF THE CRRMA**

A. Overview of the Project and its Development. The City and the Texas Department of Transportation entered into a Local Transportation Project Advanced Funding Agreement amended on December 5, 2013 (the "LPAFA") for development work for the Project. The City and CRRMA now desire that the CRRMA continue the Project. The Project and responsibilities of each Party are more specifically described in **EXHIBIT A** to this Agreement.

1. Project Commencement and Schedule. Commencement of work on the Project shall begin upon execution of this Agreement. The CRRMA shall develop a schedule for the Project.

2. 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 A** to this Agreement. Such services will be provided by the appropriate party within the schedule referenced in subparagraph A.1. above.

3. Project Budget. The budget available to the CRRMA from the City for development of the Project is set forth in **EXHIBIT A** to this Agreement; however, the Parties acknowledge the amount in **EXHIBIT A** will not cover all costs. Both Parties agree to work together to identify additional funding needed for completion of all items in **EXHIBIT A**. If the City receives additional funding for the Project, the City Manager or his designee are authorized to execute an amendment to the Agreement to make such additional project funding available to the CRRMA. The Parties will work together to minimize the actual costs of the Project, and in no event shall the cash disbursements by the CRRMA exceed the Project Budget.

B. Reports to the City. The CRRMA shall provide monthly reports concerning the status of the Project and the performance of the CRRMA's obligations under this Agreement.

C. Accounting. The CRRMA shall ensure that each distribution of Project funds is for proper and documented expenditures. Complete books and records shall be maintained by the CRRMA 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 the funding source. Such books and records shall be available for

examination by the duly authorized officers or agents of the City during normal business hours upon request made not less than five (5) business days prior to the date of such examination.

D. Limitations on Project Development. The CRRMA shall not be obligated to pursue or complete development of the Project, if funds in addition to those in **Exhibit A** are not obtained.

ARTICLE III. DUTIES AND OBLIGATIONS OF THE CITY

A. Project Responsibilities of the City. The City shall be responsible for providing the CRRMA with: (i) the funds identified in **EXHIBIT A** and any future funding source; and (ii) the work product developed by the City for the LPFA. Further, the City shall be responsible for acquiring any and all publicly-owned right of way necessary for the Project, including any property owned or managed by the El Paso Water Utilities and the El Paso County Water Improvement District.

B. Disclosure of Information. The City covenants and agrees that it shall cooperate with the CRRMA to ensure the timely completion of the Project within the specified and agreed upon Project Budget and shall promptly provide the CRRMA with such information or support as may be necessary for the CRRMA to satisfy its obligations under this Agreement.

ARTICLE IV. CITY AND CRRMA COOPERATION

A. Inspections. The City and its 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 to discuss appropriate actions to ensure that any defects in the Project or deviations from Project designs are remedied.

B. Budget Overruns. In the event the costs of the Project exceed the Project Budget, the Parties, through their respective designated representatives, will work together to identify the additional funding necessary. In the event additional funds cannot be identified to address such increased costs, the Parties shall work together to amend the scope of the Project to fit within the available funds of the Project Budget or to otherwise address the Project funding shortfall.

C. Change Order. Change Order shall mean a written order to the CRRMA's contractor executed by the CRRMA after execution of the original construction contract between the CRRMA and that contractor, directing a change in the work to be performed on a Project. A Change Order may include a change in the contract price or the time for the contractor's performance or any combination thereof. A Change Order, which would result in an increase in the Project Budget, must be approved by the City in writing prior to creating an enforceable commitment of available Project funds. A proposed Change Order requested by the CRRMA or its contractor shall be provided to the City in writing and include detailed justification for the

requested change(s). The CRRMA may approve a Change Order without the approval of the City if the CRRMA pays for any increased cost in the Project Budget from the CRRMA's own funding source.

D. Final Acceptance. The CRRMA shall notify the City in writing upon final acceptance of the Project construction. At such time, the CRRMA will assign to the City all contractor warranties, guarantees, and bonds which it possesses with respect to the 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.

E. CRRMA Performance Measures. Some of the services being provided pursuant to this Agreement are an extension of the services being provided to the CRRMA under agreements with contractors or under consulting agreements with third-party professionals. As such, the CRRMA shall ensure, through its agreements with such contractors and third-party professionals, that the same performance measures are established and maintained for the performance of the services delivered on the Project pursuant to this Agreement. The CRRMA shall enforce such measures and standards on the City's and CRRMA's behalf, and the CRRMA shall not agree to modify performance measures, as they may relate to the services contemplated herein, without the prior written consent of the City.

V. GENERAL AND MISCELLANEOUS

A. Effective Date. This Agreement becomes effective upon the date first written above, and the Parties will consider it to be in full force and effect until the Project has been completed and accepted or unless this Agreement is terminated, as provided for herein.

B. Termination. This Agreement may be terminated in the following manner:

1. By mutual written agreement and consent of both Parties; or
2. 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 all Project costs incurred by the CRRMA on behalf of the City up to the time of termination.

C. Legal 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:
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

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

Attn: City Manager

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.

D. Waiver. Neither this Agreement nor any of the terms hereof 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 thereof, 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 thereof or insistence thereupon or the exercise of any other right, power or remedy.

E. 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.

F. 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.

G. Amendments and Modifications. This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement.

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

I. 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 hereto without first obtaining the written consent of the other Party.

J. 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.

K. 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 Parties have executed and attested this Agreement by their officers thereunto duly authorized.

CITY OF EL PASO

Oscar Leeser
Mayor

APPROVED AS TO FORM:

Brie L. Franco
Brie L. Franco
Assistant City Attorney

APPROVED AS TO CONTENT:

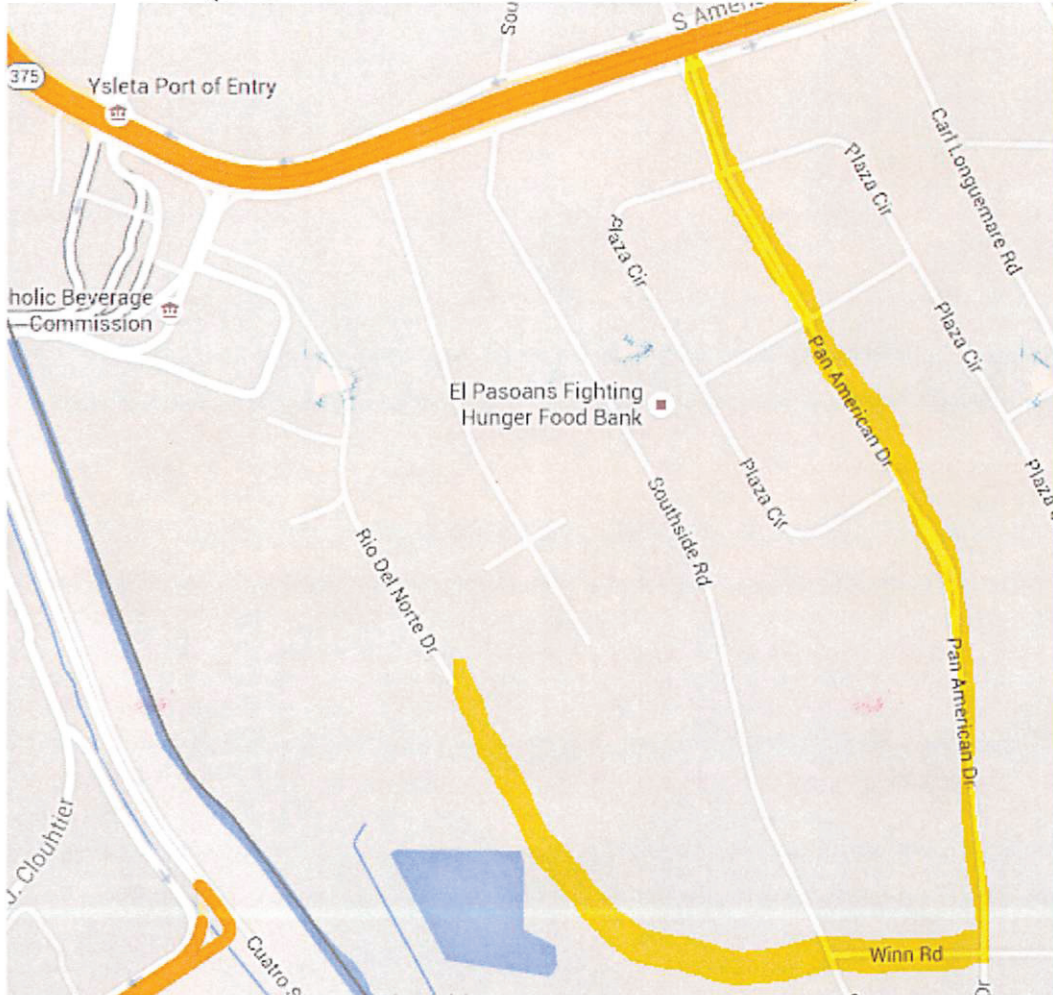
Monica Lombraña, A.A.E., Director
Capital Improvement Department

**CAMINO REAL
REGIONAL MOBILITY AUTHORITY**

Joe D. Wardy
Vice Chair

EXHIBIT "A"

WINN ROAD PROJECT - LOCATION MAP (SHOWING PROJECT LIMITS IN YELLOW)



WINN ROAD PROJECT - DESCRIPTION

The Project will consist of reconstruction of Pan American Dr. from Loop 375 to Winn Rd., widening and new construction of Winn Rd. from Pan American Dr. to Rio Del Norte for international truck traffic crossing at the Zaragoza Port of Entry. This facility would include ROW, paving, structures, drainage, landscaping, median, sidewalk, and parkway improvements. This project is a four lane divided roadway from the eastern terminus of Rio Del Norte to Pan American Drive.

The Scope of Services for preliminary design thru construction letting to be provided by the CRRMA may include, but are not limited to the following key elements:

A. Surveying

- B. Right-of-Way Mapping and Acquisition (private)
- C. Schematic Design
- D. Environmental Studies
- E. Public Involvement Activities
- F. Plans, Specifications and Estimates
- G. Project Management and Administration
- H. Construction letting

The CRRMA will coordinate with the City for its approval on the Project delivery method. In addition, the City shall give its prior approval before any solicitation and award of any contract.

WINN ROAD PROJECT - RESPONSIBILITIES

- | | |
|--|-------------------------------------|
| 1. PROJECT PLANNING: | CRRMA |
| 2. PROJECT DESIGN: | CRRMA |
| 3. ENVIRONMENTAL: | CRRMA |
| 4. ROW ACQUISITION (PUBLIC): | CITY |
| 5. ROW ACQUISITION (PRIVATE): | CRRMA (CITY TO FUND SETTLED AMOUNT) |
| 6. CONSTRUCTION LETTING: | CRRMA |
| 7. CONSTRUCTION MGMT: | CRRMA |
| 8. FINANCIAL OBLIGATIONS: | CITY |
| 9. REPORTING TO CITY: | CRRMA |
| 10. PERFORMANCE STANDARDS: | CRRMA |
| 11. UTILITY RELOCATION: | CRRMA |
| 12. CONSTRUCTION: | CRRMA |
| 13. CONSTRUCTION ENGINEERING AND INSPECTION: | CRRMA |

WINN ROAD PROJECT - AVAILABLE BUDGET

City of El Paso Current Project Funds: \$505,086.20

[END OF EXHIBIT]