

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, on behalf of the El Paso Water Utility Public Service Board (the “Utility”), has completed design work necessary for the relocation of certain utility infrastructure currently located within the Streetcar Project limits (the “Utility Project”); and,

WHEREAS, the Utility desires the completion of such improvements to its facilities while the CRRMA is developing the Streetcar Project to minimize disruption to the public; and

WHEREAS, the Parties desire that the CRRMA shall require its Streetcar Project contractor to complete the Utility Project work during the development of the Streetcar Project and the Utility agrees to provide the funding necessary for such improvements.

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

THAT the CRRMA’s Executive Director is authorized to execute an Agreement with the El Paso Water Utilities Public Service Board, as it relates to the development of certain utility infrastructure as part of the El Paso Streetcar Project.

PASSED AND APPROVED THIS 22ND DAY OF OCTOBER, 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

STATE OF TEXAS §
 § **AGREEMENT**
COUNTY OF EL PASO § **(STREETCAR PROJECT)**

THIS Agreement is made and entered into effective as of the ____ day of _____, 2015 by and between the **CAMINO REAL REGIONAL MOBILITY AUTHORITY** (the “CRRMA”) and the **EL PASO WATER UTILITY PUBLIC SERVICE BOARD** a component of the City of El Paso, whose Board of Trustees is vested with management and control of the City of El Paso water and wastewater system (the “Utility”), (individually, a “Party” and collectively, the Parties), for the purposes described herein.

WITNESSETH

WHEREAS, Section 15020.070 of the Texas Government Code allows a municipality to vest the management and control of the municipal utility system in board of trustees; and,

WHEREAS, the El Paso City Council adopted Ordinance 752 establishing the El Paso Water Utilities Public Service Board (Board) and delegated to the Board the authority to manage and control the municipal utility system; and,

WHEREAS, the CRRMA is a regional mobility authority created pursuant to the request of the City of El Paso that operates 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 of Texas; and

WHEREAS, the 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, on behalf of the Utility, has completed design work necessary for the relocation of certain utility infrastructure currently located within the Streetcar Project area boundary (the “Utility Project”); and,

WHEREAS , the Utility has the necessary funds for completion of the Utility Project and the Utility desires to complete such improvements to its facilities while the CRRMA is developing the Streetcar Project to minimize disruption to the public; and

WHEREAS, the Parties agree that the CRRMA shall require its Streetcar Project contractor to complete the Utility Project and the Utility agrees to participate in accordance with the terms and conditions of this AGREEMENT.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the Parties hereto, to be by them kept and performed as hereafter set forth, the CRRMA and Utility do agree as follows:

AGREEMENT

1. Time Period Covered

This AGREEMENT becomes effective upon the date first written above, and the CRRMA and Utility will consider it to be in full force and effect until the Utility Project described in this AGREEMENT has been completed and accepted by all Parties or unless terminated, as provided herein.

2. Project Funding and Work Responsibilities

The CRRMA included the plans, specifications and engineering estimates (PS&E) developed by the City of El Paso for the Utility 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 and desires to issue a Notice to Proceed (NTP). Through such NTP, the CRRMA will authorize the performance of only those Utility Project items of work, which the Utility has agreed to pay for as described in **ATTACHMENT A** - Payment Provision and Work Responsibilities, which is attached to and made a part of this AGREEMENT. In addition to identifying those items of work to be paid for by payments from the Utility to the CRRMA, **ATTACHMENT A** also specifies those Utility Project items of work that are the responsibility of Utility and will be carried out and completed by the Utility. The Parties shall be responsible for costs that are shown on **ATTACHMENT B**, Estimated Utility Costs, 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 Utility will be responsible for the payment of Utility Project costs incurred by the CRRMA on behalf of the Utility up to the time of termination.

4. 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 Utility Project.

5. 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.

6. Sole Agreement

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

7. Successors and Assigns

The CRRMA and Utility 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.

8. Amendments

By mutual written consent of the Parties, the scope of work and payment provisions of this AGREEMENT may be amended prior to its expiration. The President/CEO or his designee is authorized to amend the Agreement provided that such amendment does not increase the Utility's costs.

9. Inspection and Conduct of Work

Unless otherwise specifically stated in **ATTACHMENT A** 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 Utility Project is accomplished in accordance with the approved PS&E documents provided by the Utility. All correspondence and instructions to the CRRMA's selected Streetcar Project contractor performing the work will be the sole responsibility of the CRRMA.

10. Maintenance

Upon completion of the Utility Project and acceptance by the Utility, the Utility will assume responsibility for the maintenance of the completed Utility facilities unless otherwise specified in **ATTACHMENT A** to this AGREEMENT. The CRRMA shall require the contractor to provide a one year warranty from the date of acceptance by the Utility.

11. Notices

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

UTILITY

El Paso Water Utility
– Public Service Board
1154 Hawkins Blvd.
El Paso, Texas 79925
Attn: Alan Shubert

CRRMA

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

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this AGREEMENT. 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.

12. 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.

13. Venue

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

14. 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 Utility have executed this AGREEMENT as of the date first written above.

**EL PASO WATER UTILITY
– PUBLIC SERVICE BOARD**

John E. Balliew, P.E.
President/Chief Executive Officer

**CAMINO REAL
REGIONAL MOBILITY AUTHORITY**

Raymond L. Telles
Executive Director

ATTACHMENT A

PAYMENT PROVISION AND WORK RESPONSIBILITIES

1. Description of the Work Items

The Parties agree that the existing water and sanitary sewer shall be relocated and adjustments shall be made along the route of the Streetcar Project pursuant to those design and specifications completed by the City of El Paso's consultants on behalf of the Utility. The water and sanitary sewer facilities shall be owned, operated, and maintained by Utility from and after completion and final acceptance by the CRRMA and Utility. The construction cost of the Utility Project as bid by the CRRMA's selected contractor for the Streetcar Project \$4,589,036.25. The Parties agree that ~~the Utility will not be responsible for paying more than \$4,589,036.25. it is their intent to complete the relocation improvements within this bid price.~~

2. Actual Cost Agreement

The Utility will be responsible for paying only those costs identified within this AGREEMENT. Use of the funds to be provided by the Utility shall be limited to those expenses associated with construction of the water and sanitary sewer items for the Utility Project, as defined in this AGREEMENT.

3. Payments Related to the Utility Project

A. The total amount to be paid by the Utility for the Utility Project is \$4,589,036.25 (see Attachment B – Utility Project Costs); ~~provided, however, that such amount may be increased in accordance with the change order process outlined below, or by written agreement between the Parties.~~ Payments shall be made to the CRRMA by the Utility in accordance with the following schedule:

\$1,529,678.75 on March 1, 2016;
\$1,529,678.75 on March 1, 2017; and
\$1,529,678.75 on March 1, 2018.

- B. Whenever funds are paid by the Utility to the CRRMA under this AGREEMENT, the Utility will remit a warrant made payable to the CRRMA, or such other arrangement as agreed to by the Parties. The funds will be deposited by the CRRMA in an account to be managed by the CRRMA, separate and apart from the Streetcar Project funds. Utility funds in the referenced account may only be applied by the CRRMA to expenses associated with the Utility Project.
- C. The CRRMA agrees to keep any Streetcar Project contingency funds separate from the other Project funds and agrees to use contingency funds solely for those unforeseen events, emergencies or unexpected outflows related to the Streetcar Project. The Parties agree that in the event that there are remaining contingency funds available after accounting for the completion of the Streetcar Project (including the remanufacture of the 7th vehicle and purchase of certain operationally required spare parts and specialty tools), remaining contingency funds shall be split among the Parties as follows: (a) one half will be applied towards a reduction of the Utility's contribution due on March 1, 2018, up to a total reduction amount of \$720,000; and (b) all remaining funds will be used by the CRRMA for eligible project expenses. If on March 1, 2018, the CRRMA is unable to determine whether

contingency funds remain and subsequent to the March 1, 2018 payment by the Utility the CRRMA determines that there are remaining contingency funds, then the CRRMA will disburse funds to the Utility pursuant to the process outlined above.

4. Work Responsibilities

A. The Utility shall provide the following services under this AGREEMENT:

- i. Arrange and coordinate with the Streetcar Project contractor, through the CRRMA, materials and equipment testing, rejection of all work not conforming to minimum requirements of the construction contract documents, and the relocation of water and sanitary sewer line and connection of services to customers.
- ii. Advise the CRRMA of work that the Utility determines should be corrected or rejected.
- iii. Arrange, observe, and inspect all acceptance testing and notify the CRRMA of the results of these activities.
- iv. Verify and approve the Streetcar Project contractor's monthly estimate for payment of utility work installed on the Project.
- v. Provide inspection services for the construction, notify the CRRMA of defects and deficiencies in the work, and observe actions of the contractor to correct such defects and deficiencies.
- vi. Assume all responsibility for the maintenance of the existing water and sanitary sewer line upon completion of the Utility Project, acceptance by the Utility, and after a one year warranty has been provided.
- vii. Ensure all Texas Commission on Environmental Quality and all other regulatory rules, regulations and laws are strictly adhered to.
- viii. Prepare and submit both a certificate of substantial completion and a list of observed items requiring completion or correction for the relocations and adjustments to the CRRMA for concurrence.
- ix. Coordinate all construction activities performed by the Utility's staff for the relocations and adjustments through the CRRMA.

B. The CRRMA shall provide the following services under this AGREEMENT:

- i. Combine the water and sanitary sewer line relocation and adjustment plans with the plans being prepared for the Streetcar Project.
- ii. Review and approve the final construction plans prior to any construction-related activities.
- iii. Award and administer the contract for construction of the Streetcar Project and ensure that the Contractor selected is qualified to perform the Utility Project.
- ~~iv. Negotiate and administer all field changes and change orders required for the Streetcar Project. All change orders increasing construction costs for Utility Project shall be submitted to the Utility for review and approval together with an evaluation. The Utility agrees to review and either approve or disapprove all change orders within five (5) business days after receipt of such order unless the Utility Board's approval is necessary in which case the Utility shall bring the item to its Board as soon as reasonably possible. The Utility's responsibility for the payment of change orders under this paragraph shall not exceed 8% of \$4,589,036.25. In the event change orders are required for the Utility Project, the Utility's payment of such change order amounts shall be made to the CRRMA as part of the March 1, 2008 payment.~~

- ~~v~~.iv. Coordination with Utility customers concerning the construction of the Utility Project, to include the handling of all customer inquiries and complaints.
- ~~vi~~.v. Supervision of the Streetcar Project contractor to ensure that no customer services are disrupted and require the contractor to bypass, where necessary, in order to minimize interruption of customer service.
- ~~vii~~.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 Project in accordance with the approved Plans and Specifications and construction schedule.
- ~~viii~~.vii. _____ Ensure that the Streetcar contractor is maintaining accurate record drawings of the water and sanitary sewer line relocations throughout the duration of the Utility Project and that such record drawings are provided to the Utility.
- ~~ix~~.viii. _____ Ensure that during construction the Streetcar Contractor protects existing water and sanitary sewer lines located within the Utility Project boundary and that any damage done by such contractor to such lines is repaired promptly and properly.
- ~~x~~.ix. _____ Ensure that any damage to the lines caused during the construction are repaired by the Streetcar contractor at such contractor's sole expense.
- ~~xi~~.x. Conduct field observations and coordinate with the Utility's inspectors and the contractor to cure defects and deficiencies in the construction prior to final acceptance.
- ~~xii~~.xi. Make timely payment to the contractor for work performed in connection with the Streetcar Project.
- ~~xiii~~.xii. _____ Ensure access and permit the Utility's inspectors and other authorized representatives to inspect the water and sanitary sewer line construction at all times.
- ~~xiv~~.xiii. _____ Conduct and coordinate final inspection of the Streetcar Project in the presence of the Utility's engineer and inspector, transmit final list of items to be completed or repaired and observe contractor correction of same.
- ~~xv~~.xiv. _____ Maintain job file.

[END OF ATTACHMENT]

ATTACHMENT B

UTILITY PROJECT COSTS

Based on the selected Streetcar Project contractor proposal, following are those amounts due and payable from the Utility to the CRRMA for the Utility Project.

Potable Water	\$ 3,534,290.00
Wastewater	\$ 1,054,746.25
Total	\$ 4,589,036.25

[END OF ATTACHMENT]