

# **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 and the City 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 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 22<sup>ND</sup> 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           §  
   §  
COUNTY OF EL PASO   §

**INTERLOCAL AGREEMENT  
FOR PROJECT CONTRIBUTIONS**

**THIS AGREEMENT** is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the **CITY OF EL PASO** (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 of Texas; 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 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 has completed design work necessary for the completion of certain improvements (the “CBD4 Project”), which are found within the project limits of the Streetcar Project, the City has the necessary funds for completion of the CBD4 Project and the City desires to complete such improvements while the CRRMA is developing the Streetcar Project to minimize cost to the City and disruption to the public; and

**WHEREAS**, the Parties agree that it is more economical, efficient and beneficial to the Parties and the public for such City desired improvements to be completed by including such work into the CRRMA’s Streetcar Project for letting and construction by the CRRMA.

**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 City do agree as follows:

## **AGREEMENT**

### **1. Time Period Covered**

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

### **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 (or 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 and desires to issue a Notice to Proceed (NTP). Through such NTP, the CRRMA will authorize the performance of only those CBD4 Project items of work that the City has requested and has agreed to pay for with estimated costs 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 City to the CRRMA, **ATTACHMENT A** 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 B - Estimated City 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 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, the latest 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**

By mutual written consent of the Parties, the scope of work, payment requirements and other provisions of this Agreement may be amended prior to its expiration.

## **11. 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 CBD4 Project is accomplished in accordance with the approved PS&E documents provided by the City (or its consultants). 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 of the CBD4 Project, the City will assume responsibility for the maintenance of the completed CBD4 Project improvements unless otherwise specified in **ATTACHMENT A** to this Agreement.

## **13. 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:

### **CITY OF EL PASO**

City of El Paso

El Paso, Texas \_\_\_\_\_

Attn: \_\_\_\_\_

### **CRRMA**

Camino Real Regional Mobility Authority

300 N. Campbell, 2<sup>nd</sup> 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.

**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**

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Tommy Gonzalez  
City Manager

**CAMINO REAL  
REGIONAL MOBILITY AUTHORITY**

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Raymond L. Telles  
Executive Director

**ATTACHMENT A**  
**PAYMENT PROVISION AND WORK RESPONSIBILITIES**

**1. Description of the Work Items**

The Parties agree that the street improvements identified as the CBD4 Project improvements 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 B**. The Parties agree that it is their intent to complete the improvements within this estimate of cost.

**2. Actual Cost Agreement**

The City will be responsible for paying all costs associated with the planning, specification, and estimate (PS&E) development, and construction of the proposed City work. All the costs associated with construction of the street improvements for the CBD4 Project shall be provided as defined within this **ATTACHMENT A**.

**3. Schedule of Payments**

- A. The amount to be advanced for the City work is estimated to be **\$2,231,958.15**.  
(See **ATTACHMENT B** – Estimated City Costs)

Payments shall be made available to the CRRMA from the City in accordance with the following schedule:

\$557,989.54 upon execution of the Interlocal Agreement;

\$557,989.54 2<sup>nd</sup> incremental payment will be made on NTP;

\$557,989.54 3<sup>rd</sup> incremental payment shall be made on 25% of payment to Contractor; and

\$557,989.53 4<sup>th</sup> incremental payment shall be made on 50% of payment to 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 City is responsible for one hundred percent (100%) of the authorized project cost and any overruns. The City will make payment to the CRRMA within thirty (30) days from receipt of the CRRMA's written notification, or as agreed to between the Parties.
- 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. CBD4 Project funds 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.

**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 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 job file.

[END OF ATTACHMENT]

**ATTACHMENT B  
ESTIMATED CITY COSTS**

The following amount is due and payable for City's costs associated with the CBD4 Project.

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