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), which authorized the CRRMA to utilize 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 now desire to enter into an additional agreement to allow for the CRRMA to fund the construction work necessary for the Arterial 1 (Mission Ridge Blvd.) 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 – VRF Project Development Agreement for the Arterial 1 (Mission Ridge Blvd.) Roadway Improvement Project with the County of El Paso, Texas.

PASSED AND APPROVED THIS 25TH DAY OF MARCH 2015.

CAMINO REAL REGIONAL MOBILITY AUTHORITY

_____
Joe D. Wardy, Vice Chair

ATTEST:

_____
Susan A. Melendez, Board Secretary

APPROVED AS TO CONTENT:

_____
Raymond L. Telles
Executive Director

INTERLOCAL AGREEMENT
VRF PROJECT DEVELOPMENT AGREEMENT FOR THE
ARTERIAL 1 (MISSION RIDGE BLVD.) ROADWAY IMPROVEMENT PROJECT

THIS INTERLOCAL AGREEMENT (the "Agreement") is made and entered into effective as of the __ day of _____, 2015, 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

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

I.
FINDINGS

1. **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 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-C** to this Agreement.

II.
DUTIES AND RESPONSIBILITIES OF THE AUTHORITY

1. Project Development Services. 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 for the construction of the Project identified in **EXHIBIT A**.

A. Timeline for Commencement and Completion of Work. Commencement of work on the Project shall begin when the County Representative (as defined in Section IV below) issues a written Notice to Proceed to the Authority for the Project. No later than fifteen (15) days from Authority receipt of a Notice to Proceed, the Authority will initiate the process to commence work on the Project, as more specifically described in **EXHIBITS A, B and C**. Project-related services, including any applicable phasing of such work, will be completed in accordance with the schedule developed between the County 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 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. Authority and County Cooperation. The parties shall cooperate in the development of the Project such that the Project is most effectively and efficiently developed.

A. Inspections. The County 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 such 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 approved Project designs are remedied.

B. Budget Overruns. In the event the costs of the Project funded in whole or in part from the VRF proceeds exceed, or due to a change in circumstances during development of such Project are expected to exceed, the amount specified in the applicable Project Budget and other lawfully available and designated funds, the Parties, through their respective designated representatives, will work together to identify the additional funding necessary for such Project. 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 or to otherwise address the Project funding shortfall.

C. Change Order. Change Order shall mean a written order to the Authority's contractor executed by the Authority after execution of the original construction contract between the Authority and that contractor, directing a change in the work to be performed on a Project, and may include a change in the contract price or the time for the contractor's performance or any combination thereof. A Change Order requested by the Authority or its contractor, which would result in an increase in the Project Budget, must be approved by the County in writing prior to creating an enforceable commitment of VRF or other lawfully available and designated funds proceeds. A proposed Change Order requested by the Authority or its contractor shall be provided to the County in writing and include detailed justification for the requested change(s). The Authority may approve a Change Order without the approval of the County if the Authority agrees to pay the increased cost of the Project from its own funding source.

D. Final Acceptance. The Authority shall notify the County in writing upon Final Acceptance of each Project funded, in whole or part, from the VRF proceeds. Upon Final Acceptance of a Project, the Authority will assign to the County, or other responsible entity, 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 a Project after Final Acceptance.

E. Authority Performance Measures. Some of the services being provided pursuant to this Agreement, are an extension of the services being provided to the Authority under agreements with contractors or under consulting agreements with third-party professionals. As such, the Authority 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 as are applicable to work performed by such contractors and third parties on other Authority projects. The Authority shall enforce such measures and standards on the County's and Authority's behalf, and the Authority shall not agree to modify performance measures, as they may relate to the services contemplated herein, without the prior written consent of the County.

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

4. Accounting. The Authority shall use diligence to insure that each distribution of Project funds is for proper and documented expenditures. Complete books and records shall be maintained by the Authority 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 in accordance with the provisions of the RMA Act. Such books and records shall be available for examination by the duly authorized officers or agents of the County during normal business hours upon request made not less than five (5) business days prior to the date of such examination. In addition, the Authority shall coordinate with the County's Auditor's Office to provide information and documentation necessary for the County to complete its annual books, records and reports for each fiscal year ending September 30th during which: (1) Project funds are/were distributed for the Project; (2) Project warranties are/were in effect; and/or (3) Project claims are/were outstanding.

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

III.
DUTIES AND OBLIGATIONS OF THE COUNTY

1. Project Responsibilities of the County. The County shall be responsible for the costs of those responsibilities as enumerated within **EXHIBIT B** to this Agreement. Once those responsibilities or deliverables have been completed, the County shall bear no additional costs

for completion of the Project, unless specifically included in the Project Budget or in a written amendment of this Agreement approved by the County.

2. Financial Obligations of the County. Authority financial obligations created hereunder shall be limited solely to VRF proceeds transferred from time to time by the County to the Authority as required by the Interlocal Agreement dated December 16, 2013 and the Transportation Project and Pledge Agreement dated April 9, 2014, both with the Authority. Except for delivery of the Special Vehicle Registration fees in accordance with the referenced agreements, the County shall have no financial obligation to make any payment, in whole or in part, on behalf of the Authority, unless specifically provided in accordance with the terms of this Agreement, its exhibits or amendments.

3. Disclosure of Information. The County covenants and agrees that it shall cooperate with the Authority to ensure the timely completion of the Projects within specified and agreed upon budgets and shall promptly provide the Authority with such information or support as may be necessary for the Authority to satisfy its obligations under this Agreement.

IV.
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, 2nd Floor El Paso, Texas 79901.

2. Limitations on County Representative. Notwithstanding anything contained herein 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:	**Authority:**
El Paso County Judge 500 E. San Antonio, Room 301 El Paso, Texas 79901 With copies to:	Executive Director 300 N. Campbell, 2nd Floor El Paso, Texas 79901
Director of Public Works 800 E. Overland, Room 407	Locke Lord, LLP Attn: C. Brian Cassidy

El Paso, Texas 79901

600 Congress Ave., Ste. 2200
Austin, Texas 78701.

V.
TERM AND TERMINATION

Term and Termination. Subject to the following, this Agreement shall be effective as of the 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.

VI.
GENERAL AND MISCELLANEOUS

1. 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

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 hereto 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.

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: _____	By: _____
Veronica Escobar	**Joe D. Wardy**
County Judge	**Vice Chair**

EXHIBIT "A"

ARTERIAL 1 (MISSION RIDGE BLVD.) ROAD IMPROVEMENTS PROJECT
CSJ #0924-06-502
PROJECT DESCRIPTION

The proposed work consists of constructing a new 4-lane divided arterial to include asphalt pavement, raised median, curbs, sidewalks, ADA ramps, illumination, signing and striping, storm drain and detention ponds. Project Limits are from Pellicano to 1 mile south of Pellicano.

PROJECT LIMITS

VICINITY MAP

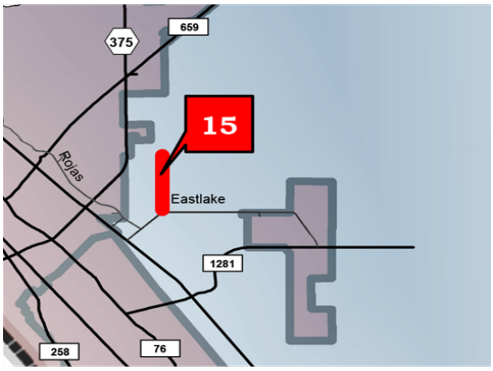

Figure 1.1

EXHIBIT "B"

ARTERIAL 1 (MISSION RIDGE BLVD.) ROAD IMPROVEMENTS PROJECT CSJ #0924-06-502 PARTY RESPONSIBILITIES

1. **PLANNING:** County (COMPLETE)

2. **DESIGN:** 3rd Party – via agreement with the County (COMPLETE)

3. **ENVIRONMENTAL PERMITTING:** N/A

4. **RIGHT-OF-WAY ACQUISITION:** County (ON GOING)

5. **CONSTRUCTION LETTING:** Authority

6. **CONSTRUCTION:** Authority

7. **FINANCIAL OBLIGATIONS:** CRRMA Senior Lien VRF Revenue Bonds, Series 2014

8. **REPORTING:** Authority

9. **PERFORMANCE STANDARDS:** County

10. **MARKETING AND PUBLIC OUTREACH:** None

11. **UTILITY RELOCATION:** 3rd Party – via agreement with the County

12. **OTHER:** N/A

EXHIBIT "C"

ARTERIAL 1 (MISSION RIDGE BLVD.) ROAD IMPROVEMENTS PROJECT
CSJ #0924-06-502
CONSTRUCTION PROJECT BUDGET

DESCRIPTION	TOTAL ESTIMATED CONSTRUCTION COST	CRRMA PAYS WITH VRF BOND $	CRRMA PAYS WITH OTHER FUNDS
LAND	$ 0.00	$ 0.00	$ 0.00
UTILITY RELOCATION	$ 0.00	$ 0.00	$ 0.00
PERMITS & SERVICES	$ 0.00	$ 0.00	$ 0.00
ENVIRONMENTAL & PRELIMINARY ENGINEERING	$ 0.00	$ 0.00	$ 0.00
CONSTRUCTION	$ 5,404,336	$ 5,404,336	$ 0.00
MISCELLANEOUS	$ 0.00	$ 0.00	$ 0.00
TOTAL	$ 5,404,336	$ 5,404,336	$ 0.00