

**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 provide general project oversight services for the projects to be developed by 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 – Project Oversight Agreement for Various VRF Transportation Projects 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 –
PROJECT OVERSIGHT AGREEMENT FOR
VARIOUS VRF TRANSPORTATION PROJECTS**

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

WHEREAS, the Parties have entered or anticipate entering into various additional agreements that have or will authorize the Authority’s use of bond proceeds generated from the Special Vehicle Registration Fees for the design or construction of various projects more fully identified within **EXHIBIT A** to this agreement, all of which are 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 and other associated 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 projects, including those projects more specifically enumerated in **EXHIBIT A** to this Agreement. The responsibilities of each party for the development of the projects are more fully enumerated within this Agreement and **EXHIBIT A** to this Agreement.

II. DUTIES AND RESPONSIBILITIES OF THE AUTHORITY

1. **Project Oversight 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 all or a portion of the funding necessary for the oversight of the design and/or construction of the projects identified in **EXHIBIT A**.

A. Timeline for Commencement of Work. Commencement of oversight services on the projects shall begin upon execution of this Agreement. Project-related oversight services will be completed in accordance with the individual project schedules developed for each project between the County and the Authority.

B. Scope of Work. Specific elements of the oversight services contemplated herein and the responsible party for the performance of such oversight services are set forth in **EXHIBIT A** to this Agreement. Such services will be provided on each individual project within the jointly developed schedule referenced in subparagraph 1.A. above.

C. Oversight Budget. The project oversight budget is set forth in **EXHIBIT B** to this Agreement (“Oversight Budget”). The Parties will work together to attempt to minimize the actual costs as reflected in the Oversight Budget, and in no event shall the cash disbursements by the Authority exceed such Oversight Budget, absent the written agreement of the Parties.

2. Authority and County Cooperation. The parties shall cooperate in the development of the projects such that the individual projects are most effectively and efficiently developed.

A. Inspections. The County and its authorized representatives may observe or inspect all oversight work done and materials furnished at reasonable times and places. If either Party believes a particular project is not being developed 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 a particular 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. Authority Performance Measures. Some of the oversight services being provided pursuant to this Agreement are an extension of the services being provided to the Authority under consulting agreements with third-party professionals. As such, the Authority shall ensure, through its agreements with such third-party professionals, that the same performance measures are established and maintained for the performance of the services delivered on the projects contemplated by this Agreement as are applicable to work performed by such 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 various projects. Such annual report shall include information on the current design, construction and financial status of the projects 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 VRF 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) VRF funds are/were distributed for a VRF project; (2) project warranties are/were in effect; and/or (3) project claims are/were outstanding.

5. Limitations on Project Oversight. Notwithstanding anything herein to the contrary, the Authority shall not be obligated to pursue or complete oversight services to one or more of the contemplated projects 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 A and B** to this Agreement. Once those responsibilities or deliverables have been completed, the County shall bear no additional costs for oversight of the projects, unless specifically included in the Oversight 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 oversight services for 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:

Director of Public Works
800 E. Overland, Room 407
El Paso, Texas 79901

Authority:

Executive Director
300 N. Campbell, 2nd Floor
El Paso, Texas 79901.

2. Limitations on County Representative. Notwithstanding anything contained herein to the contrary, changes to the funding source(s), change orders that increase the Oversight 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:

El Paso County Judge
500 E. San Antonio, Room 301
El Paso, Texas 79901
With copies to:

Director of Public Works
800 E. Overland, Room 407
El Paso, Texas 79901

Authority:

Executive Director
300 N. Campbell, 2nd Floor
El Paso, Texas 79901

Locke Lord, LLP
Attn: C. Brian Cassidy
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: _____
Veronica Escobar
County Judge

By: _____
Joe D. Wardy
Vice Chair

EXHIBIT A

PROJECT OVERSIGHT SERVICES

INTRODUCTION

The scope of the Oversight Services contemplated by this Agreement includes program management, administration and oversight of professional services contracts for engineering services (the “Engineer”), and the preparation of letting packages for the following 2013 El Paso County Comprehensive Mobility Plan and related projects (2013 CMP Projects):

- i. Eastlake Widening from I-10 to west of Darrington;
- ii. Old Hueco Tanks from North Loop to I-10;
- iii. Eastlake Extension from Darrington to Horizon;
- iv. Rojas Widening from City limits to Eastlake;
- v. Arterial 1 from Pellicano to Paseo del Este; and
- vi. Vista del Sol from Loop 375 to Cherrington Dr.
- vii. Darrington from Pellicano to Eastlake
- viii. Camino Real NHT from San Elizario, TX to Anthony, TX

The Oversight Services to be provided shall consist of three types of Tasks, as more fully described below and shall be provided by the Authority’s general engineering consultant (GEC).

1. TASK 1 - PROGRAM MANAGEMENT

The GEC will provide staff to administer, manage, review, and coordinate development of the 2013 CMP Projects. This staff will represent the Authority’s interest as defined in any individual project agreements entered into by the Authority and another party, recognizing that such Oversight Services are ultimately being provided for the benefit of the County. The GEC will develop and maintain a staffing plan for consistency and appropriate levels of project staffing. Activities in this task include:

a. Program Scheduling and Cost Estimating

The GEC shall update program cost estimates. Completion of this Task shall include a complete review of all available data on the 2013 CMP Projects provided by El Paso County, TxDOT, and other Stakeholders. Estimates will include probable costs for the completion of the individual projects, including but not limited to:

- Preliminary Engineering;
- Schematic Design;
- Environmental Approvals;
- Final Engineering (PS&E);
- Right-of-way Acquisition;
- Utility Relocations;
- Environmental Compliance/Mitigation;
- Procurement;
- Construction;
- Construction Management and Oversight;
- Testing;
- Inflation; and
- Other Services as Deemed Necessary.

Upon completion of this evaluation, an approach will be developed for the implementation of the individual projects through the development of a program schedule for the 2013 CMP Projects. A Master Program Schedule will be prepared that will show critical activities and milestones for each of the Projects. The following major tasks will be included:

- Schematic Design;
- Environmental Approval;
- Final Engineering (PS&E)
- Right-of-Way Acquisition;
- Utility Relocation;
- Permits; and
- Construction Letting.

b. Project Reporting

- Prepare and issue monthly reports on the status of the 2013 CMP Projects, which will document any issues, delays encountered, and corrective actions as necessary.
- Provide a monthly update to the Authority on key milestones accomplished during the preceding month, meetings and key activities for the upcoming month, and identify outstanding issues requiring resolution.
- Assist in the development of any reports required of the Authority by El Paso County, TxDOT or other stakeholders.
- Track, monitor, and prepare reports on DBE/HUB utilization for Engineer's DBE/HUB program, if required.

c. Project Meetings & Documentation

Facilitate the following project meetings to assess progress, schedule, and quality of services being provided as well as identify issues:

- Bi-weekly 2013 CMP stakeholder coordination meetings
- Project Progress Meetings
- Issue Resolution Meetings

d. Project Agreement Support

The GEC shall provide support as requested with the development of project agreements necessary for the implementation and completion of the 2013 CMP Projects. Such support could include assisting and coordinating with Authority and County staff, financial advisors, and others to develop project agreements.

e. Document Controls

- Develop and implement a document control plan.
- Maintain project files for the duration of the 2013 CMP Projects.
- Transfer program files to the Authority and/or the County upon completion of the work or as directed by the Authority.
- Assist Engineer with compiling and maintaining technical support data.

2. TASK 2 - MANAGEMENT OF ENGINEERING SERVICES

This will include the work required to administer the CRRMA's professional services consultant contract(s) with the Engineer(s) for the engineering services on the 2013 CMP Projects.

a. Project Coordination

- Coordinate the details of and participate in project kick-off meetings
- Work with the Authority, County, TxDOT, Engineer, third party consultants, utility companies, and public agencies to coordinate project development

b. Project Management Plan (PMP)

Review and comment on the Engineer's PMP, components of which will include:

- Project administration
- Design quality management plan
- Communications management
- Document controls

c. Administration

- Review and report on the Engineer's submittals of records and reports as required for the Project by El Paso County, TxDOT and/or FHWA
- Report project progress and issues in a timely manner.
- Review, monitor, and report on Engineer's project schedule
- Maintain accurate records of the costs involved in potential change order work. These records will include labor times in the portion of the work in dispute.

d. Design Criteria

The GEC will work with the Engineer to establish the design criteria to be used by the design team in the production of the deliverables.

e. Schematic Development

The GEC will oversee the schematic plan development if required. Variances from the configuration will be tracked and resolved through the resolution meetings. The GEC will identify opportunities for changes to the schematic to accommodate project goals. These opportunities will be coordinated with the Engineer, Authority, County, and other project stakeholders.

f. Production Schedule

The GEC will work with the Engineer to understand the design submittal schedule and provide GEC staffing levels to accommodate the Engineer's proposed design production schedule. The Engineer's production schedule will be coordinated with the Authority, and County to keep Project stakeholders informed of key milestone dates and design review schedules.

g. Work Group Meetings

The GEC will attend the Engineer's design work group meetings. In these meetings, the GEC will stay informed of design development issues and provide guidance to the Engineer when required.

h. Design Reviews

After a design submittal has been through the Engineer's design quality control and the design quality assurance reviews, the GEC will perform a design quality oversight review. This review will:

- Audit records to verify compliance with the approved design criteria
- Audit design to confirm all previous review comments have been incorporated

The GEC will work with the Authority and the County to determine each project's required design reviews, which could include:

- Design Summary Report
- 30% schematic plan
- 100% schematic plan
- Cost Estimate
- Geopak and MicroStation .DGN files for schematic
- Technical memorandums on drainage analysis, bridge concepts, lighting, ITS assessment, and aesthetics
- 30% PS&E
- 100% PS&E

Other design reviews may include:

- Over the shoulder reviews
- Request for information (RFI) submittals

3. TASK 3 – CONSTRUCTION LETTINGS

The GEC will provide professional services associated with procurement in accordance with the project agreements. The GEC will provide qualified technical and professional personnel to perform this task. The GEC shall provide support as necessary with the development of an approach for the construction lettings for the 2013 CMP Projects, including identification and preparation of documents necessary for such lettings.

The following activities are included:

- Evaluation of CRRMA, El Paso County, and TxDOT procurement policies and procedures
- Developing letting schedules
- Packaging of the construction letting documents
- Management of letting process
- Coordination with El Paso County, with the Authority, TxDOT, Authority legal counsel, and other stakeholders
- Review and assistance in evaluation of the response to letting packages

4. ASSUMPTIONS

a. Services Provided by Others

This work authorization assumes the following activities will be provided by others, have already occurred, or will occur in the future:

- Environmental documents (previously completed by TxDOT or N/A)
- Preliminary design services to produce schematic design (the Engineer's scope or previously completed by TxDOT)
- PS&E (the Engineer's scope or previously completed by TxDOT or the County)
- ROW acquisition
- ROW mapping revisions/updates necessitated by design (the Engineer's scope)
- Utility design
- Utility Agreements (this is envisioned, as required, in future CE&I work authorization)
- Geotechnical investigations and recommendations (the Engineer's scope or previously completed by TxDOT)
- Any and all hazardous material mitigation

- Construction Engineering and inspection and material testing (this is envisioned in future project specific CE&I work authorizations)
- Construction

b. Schedule

This work authorization assumes the project schedules will follow a reasonably normal project development schedule. If the Engineer's services or the letting schedules are delayed beyond reasonable expectations, the budget provided in **EXHIBIT B** may not cover all project development expenses.

c. Funding Source

This scope assumes the following projects are funded entirely from Local funds:

- a. Eastlake Widening from I-10 to west of Darrington;
- b. Eastlake Extension from Darrington to Horizon;
- c. Rojas Widening from City limits to Eastlake;
- d. Arterial 1 from Pellicano to Paseo del Este; and
- e. Vista del Sol from Loop 375 to Cherrington Dr.
- f. Darrington from Pellicano to Eastlake
- g. Camino Real NHT from San Elizario, TX to Anthony, TX

[END OF EXHIBIT]

**EXHIBIT B
OVERSIGHT BUDGET**

**PROJECT OVERSIGHT
FOR VARIOUS VRF PROJECTS**

<u>OVERSIGHT TASKS</u>	<u>TOTAL</u>
TASK 1 – PROGRAM MANAGEMENT	\$261,943
TASK 2 – MANAGEMENT OF ENGINEERING SERVICES	\$436,815
<u>TASK 3 – CONSTRUCTION LETTINGS</u>	<u>\$538,471</u>
TOTAL	\$1,237,229