

CAMINO REAL REGIONAL MOBILITY AUTHORITY BOARD RESOLUTION

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is developing a transportation project known locally as the Pellicano Drive Widening Project (the “Project”), which contemplates the construction of a six lane divided roadway and associated roadway improvements (Pellicano Drive) which will be located within El Paso County; and

WHEREAS, the El Paso Water Utility Public Service Board (Utility) has completed design work necessary for the completion of certain utility infrastructure improvements (the “Utility Project”), which are located within the Project’s limits; and

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

WHEREAS, the Parties desire that the CRRMA shall require its Project contractor to complete the Utility Project work during the development of the 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 CRRMA’s Pellicano Drive Widening Project.

PASSED AND APPROVED THIS 12TH DAY OF FEBRUARY 2020.

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

ATTEST:

Joyce A. Wilson, Chair

Joe R. Fernandez, Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles, Executive Director

STATE OF TEXAS §
 §
COUNTY OF EL PASO § **AGREEMENT**
 § **(PELLICANO DRIVE WIDENING PROJECT)**

THIS Agreement is made and entered into effective as of the ____ day of _____, 2020 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 1502.070 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 Pellicano Drive Roadway Improvement Project (the “Project”), which contemplates the construction of a six lane divided roadway and associated roadway improvements (Pellicano Drive) which will be located within El Paso County; and

WHEREAS, the Utility desires to install water and wastewater facilities within the Project area (the “Utility Project”), and such improvements are necessary to serve future development; 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 Project to minimize disruption to the public; and

WHEREAS, the Parties agree that the CRRMA shall require its 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 has included the plans, specifications and engineering estimates (PS&E) developed by the Utility for the Utility Project into the Project procurement process for a construction contractor. Pursuant to and in accordance with such procurement process, the CRRMA has selected the lowest responsive bidder and intends 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. Utility may increase the contingency amount by an additional 15%, provided funding is available, and upon review and approval by Utility's Vice President – Operations & Technical Services or Chief Technical Officer or Water/Wastewater Engineering Division Manager.

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.

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 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: Water/Wastewater Division Manager

CRRMA

Camino Real Regional Mobility Authority
801 Texas Avenue
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.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the CRRMA and Utility have executed this Agreement as of the date first written above.

UTILITY:
EL PASO WATER UTILITY
– PUBLIC SERVICE BOARD

John E. Balliew
President / CEO

APPROVED AS TO FORM

Juan S. Gonzalez
Assistant General Counsel

CRRMA:
CAMINO REAL REGIONAL
MOBILITY AUTHORITY

Raymond L. Telles
Executive Director

ATTACHMENT A
PAYMENT PROVISIONS & WORK RESPONSIBILITIES

1. Description of the Work Items

The Parties agree that proposed water and sanitary sewer lines shall be constructed within the project limits of the Project, as more fully enumerated within the PS&E developed by the Utility. The water and sanitary sewer facilities shall be owned, operated and maintained by the Utility from and after completion and final acceptance by the CRRMA and Utility. The Parties agree that it is their intent to complete the improvements within the amounts identified herein.

2. Actual Cost Agreement

The Utility will be responsible for paying only those costs identified herein, subject to the provisions noted 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. Schedule of Payments

- A. The total amount to be paid by the Utility for the Utility Project is **\$3,067,434.50** (see Attachment B – Utility Project Costs); provided, however, that such amount may be increased or decreased in accordance with the change order process outlined below, or by written agreement between the Parties. Payment of **\$3,067,434.50** shall be made by the Utility after the beginning of Utility's 2020-2021 Fiscal Year and upon execution of this Agreement.
- 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 Project funds. Utility funds in the referenced account may only be applied by the CRRMA to expenses associated with the Utility Project. Any funds remaining from the contingency shall be returned to the Utility.
- C. Upon completion of the Project, the CRRMA will perform an audit of the Project costs. Any funds due by the Utility, or the CRRMA, will be promptly paid by the owing party.

4. Work Responsibilities

- A. The Utility shall provide the following services under this Agreement:
 - i. Coordinate all construction activities performed by the Utility's staff in relation to the Utility Project through the CRRMA .

- ii. Periodically observe and inspect the Utility Project construction activities and advise the CRRMA of any work not conforming to minimum requirements of the construction contract documents.
- iii. Verify the contractor's monthly estimate for payment of utility work completed for the Utility Project .
- iv. Review and comment on the punch list developed and provided by the CRRMA of observed items requiring completion or correction for the Utility Project.
- v. Upon completion of the punch list items, prepare and submit a certificate of substantial completion and acceptance of the work completed for the Utility Project to the CRRMA.
- vi. Assume all responsibility for the ownership, maintenance and contractor warranty of the water and sanitary sewer lines completed as part of the Utility Project after acceptance by the Utility.

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

- i. Combine the water and sanitary sewer line construction plans with the plans prepared for the 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 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 Project. All change orders increasing construction costs for the 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 the Utility Board as soon as reasonable possible.
- v. Coordination with the Utility customers concerning the construction of the Utility Project, to include the handling of all customer inquiries and complaints.
- vi. Supervision of the Project contractor to ensure that no customer services are disrupted and require contractor to bypass, where necessary, in order to minimize interruption of customer service as required in the plans.
- vii. Provide overall project management to supervise the day-to-day activities of the construction and monitor the activities of the Project contractor to promote the timely and efficient completion of the Utility Project in accordance with the approved Plans and Specifications and construction schedule.
- viii. Ensure that the Project contractor is maintaining accurate record drawings of the water and sanitary sewer line relocations and adjustments throughout the duration of the Utility Project and that such record drawings are provided to the Utility.
- ix. Ensure that during construction the 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. Ensure that any damage to the lines caused during the construction is repaired by the Project contractor at such contractor's sole expense.

- xi. 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 for utility work performed in connection with the Utility Project.
- xii. Make timely payment to the contractor for work performed in connection with the Project.
- xiii. Conduct and coordinate final inspection of the 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.
- xiv. Maintain project job file.

[END OF ATTACHMENT]

ATTACHMENT B
ESTIMATED UTILITY COSTS

Based on various calculations, following are those amounts due and payable for Utility's costs associated with this project.

\$2,413,838.90	Letting Value
\$412,211.71	Admin, CE&I + Testing
<u>\$241,383.89</u>	<u>Contingency</u>
\$3,067,434.50	TOTAL

Amount of total Utility's Costs due from the Utility: **\$3,067,434.50**

[END OF ATTACHMENT]