

EXHIBIT E

FORM OF PERFORMANCE BOND

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**EL PASO STREETCAR INFRASTRUCTURE PROJECT
CONSTRUCTION CONTRACT**

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____, a _____, as “Principal” and _____, as “Surety” or as “Co-Sureties”, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the CAMINO REAL REGIONAL MOBILITY AUTHORITY (the “CRRMA”), a political subdivision of the State of Texas, as “Obligee”, in the sum of [\$______] (the “Bonded Sum”), for the payment whereof Principal and Surety (or Co-Sureties), bind themselves, and their heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee, has awarded to Principal, a Construction Contract for the El Paso Streetcar Infrastructure Project, duly executed and delivered as of _____, 2015 (the “Contract”), on the terms and conditions set forth therein; and

WHEREAS, upon issuance by the Obligee of NTP, Principal is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Obligee shall release this bond upon the occurrence of all of the conditions set forth in Section 4.12 of Exhibit A – General Conditions of the Contract.

The following terms and conditions shall apply with respect to this bond:

1. The Contract Documents are incorporated by reference herein.
2. This bond specifically guarantees the performance of each and every obligation of Principal under the Contract Documents, as they may be amended and supplemented, including but not limited to, its liability for liquidated damages as specified in the Contract Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive the final completion of the construction called for in the Contract Documents with respect to those obligations of Principal which survive such final completion; provided, however, that Principal’s warranty obligations shall be guaranteed by a different bond.

4. Whenever Principal shall be, and is declared by the Obligeo to be, in default under the Contract Documents and the Obligeo has formally terminated the Principal's right to complete the Work, provided that the Obligeo is not then in material default thereunder, Surety shall promptly take one of the following actions with the consent of the Obligeo:

- a. arrange for the Principal to perform and complete the Contract;
- b. complete the Project in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors;
- c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligeo for a contract for performance and completion of the Work, arrange for a contract to be prepared for execution by the Obligeo and the contractor selected with the Obligeo's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract in an amount that corresponds to the amount of Work to be completed, and pay to the Obligeo the amount of damages as described in Paragraph 6 in excess of the unpaid balance of the Contract Price incurred by the Obligeo resulting from the Principal's default; or
- d. waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the Obligeo and, as soon as practicable after the amount is determined, tender payment therefore to the Obligeo, or (ii) deny liability in whole or in part and notify the Obligeo citing reasons therefore.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligeo to Surety demanding that Surety perform its obligations under this Bond, and the Obligeo shall be entitled to enforce any remedy available to the Obligeo. If Surety proceeds as provided in Subparagraph 4.d, and the Obligeo refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligeo shall be entitled to enforce any remedy available to the Obligeo.

6. After the Obligeo has terminated the Principal's right to complete the Contract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligeo shall not be greater than those of the Principal under the Contract, and the responsibilities of the Obligeo to Surety shall not be greater than those of the Obligeo under the Contract. To the limit of the Bonded Sum, but subject to commitment by the Obligeo of the unpaid balance of the Contract Price to mitigation costs and damages on the Contract, Surety is obligated without duplication for:

- a. the responsibilities of the Principal for correction of defective work and completion of the Work;
- b. additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
- c. Liquidated Damages under the Contract.

7. No alteration, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this bond, provided that the aggregate dollar amount of change orders, without Surety's prior written consent thereto having been obtained, does not increase the Contract Price by more than \$_____ [10% of the Contract Price]. Surety waives notice of any alteration, modification, supplement or extension of time other than change orders in excess of such amount.

8. If Oblige fails to notify Surety of its intent to enforce Surety's obligations hereunder within 365 days after a declaration of default under the Contract Documents and a formal termination of Principal's right to complete the Work, then this Performance Bond shall be null and void and Surety shall be released from any further obligations hereunder.

9. Correspondence or claims relating to this bond should be sent to Surety at the following address:

10. No right of action shall accrue on this bond to or for the use of any entity other than the Oblige or its successors and assigns.

11. If any legal action be filed on this bond, venue shall be in El Paso, Texas.

12. This bond is executed in accordance with the provisions of Chapter 2253 of the Texas Government Code, as amended.

13. Initially capitalized terms not otherwise defined herein shall have the definition set forth in Exhibit A of the Contract.

IN WITNESS WHEREOF, Principal and Surety have caused this bond to be executed and delivered as of _____, 2015.

Principal:

By: _____
Its: _____
(Seal)

Surety:

By: _____
Its: _____
(Seal)

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]