

**INTERLOCAL AGREEMENT  
VRF PROJECT DEVELOPMENT AGREEMENT FOR THE  
MONTANA AVENUE RIGHT-OF-WAY  
ACQUISITION & UTILITY RELOCATION PROJECT**

**THIS INTERLOCAL AGREEMENT** (the “Agreement”) is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021, 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, which was subsequently amended on December 2, 2016, both 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 certain County designated transportation projects within El Paso County; and

**WHEREAS**, the County desires that the transportation project described in **EXHIBIT A** (the “Project”), which is located in El Paso County and is within or adjacent to the Authority’s area of jurisdiction, be financed in whole or in part by the Authority; and

**WHEREAS**, the County and CRRMA now desire to enter into an additional project development agreement to allow for the CRRMA to fund the right-of-way acquisition and utility adjustment activities necessary for the Project from the referenced VRF bond proceeds; and

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

## **I. FINDINGS**

**A. 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.

**B. 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 and such other projects as may be identified by the County from time to time. The County now desires to include the Project, as that term is more specifically enumerated in **EXHIBIT A** to this Agreement, as an eligible project to be funded in whole or in part by VRF funds. 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**

**A. Project 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 TxDOT with all or a portion of the funding necessary for the right-of-way acquisition activities and utility adjustments necessary for the development of the Project identified in **EXHIBIT A**.

**1. Timeline for Commencement and Completion of Work.** Commencement of work on the Project shall begin upon execution of this Agreement. 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.

**2. 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 II.A.1. above.

**3. 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.

**B. Authority and County Cooperation.** The Parties shall cooperate in the development of the Project such that the Project is most effectively and efficiently developed. As the Project is being developed by TxDOT and the Authority's role in the Project is limited to those activities noted herein, the Authority will not be responsible for reviewing any TxDOT project activities.

**C. 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 Authority's activities in support of the Project 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 Authority's involvement in the Project. Such annual report shall include information on the status of the transfer of funds required by this Agreement and the state of the Authority as a public entity in general.

**D. 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 30<sup>th</sup> 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.

**E. 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

**A. 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.

**B. 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 as amended on December 2, 2016, all 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.

**C. Disclosure of Information.** The County covenants and agrees that it shall cooperate with the Authority to ensure the timely completion of the Project 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

**A. 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:

**County:**

Director of Planning & Development  
800 E. Overland, Room 200  
El Paso, Texas 79901

**Authority:**

Executive Director  
801 Texas Avenue  
El Paso, Texas 79901.

**B. 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.

**C. 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

**Authority:**

Executive Director  
801 Texas Avenue  
El Paso, Texas 79901

**With copies to:**

Director of Planning & Development  
800 E. Overland, Room 200  
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**

- A. 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.
- B. 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.

**C. 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.

**D. 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.

**E. Venue.** For any and all disputes arising under this Agreement, venue shall be in El Paso County, Texas.

**F. 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.

**G. 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.

**H. 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.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

**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**

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**Ricardo A. Samaniego**  
**County Judge**

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**Joyce A. Wilson**  
**Chair**

**ATTEST:**

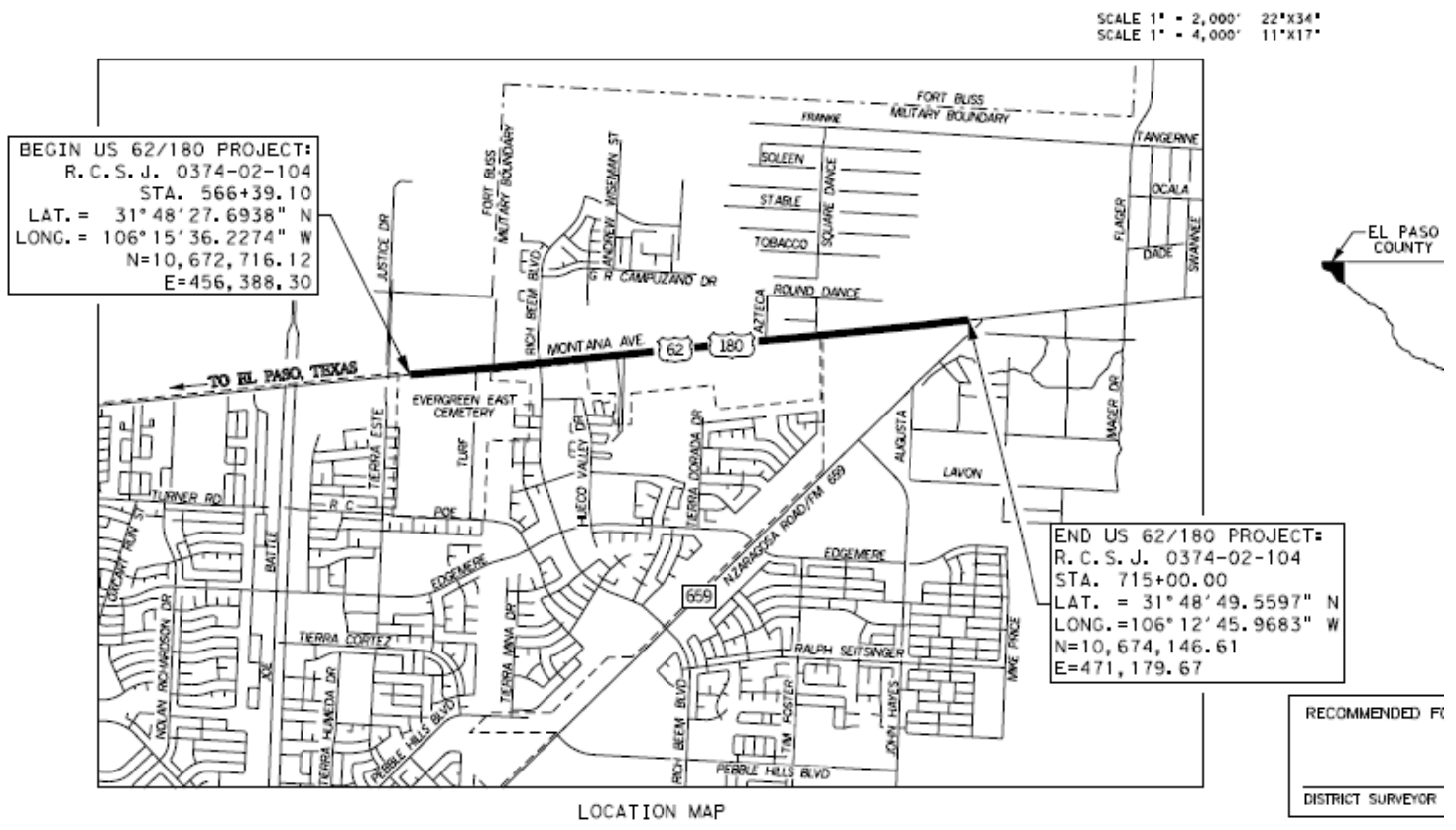
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**Dorothy M. (Sissy) Byrd**  
**Board Secretary**

## EXHIBIT "A"

### MONTANA AVENUE RIGHT-OF-WAY ACQUISITION & UTILITY ADJUSTMENT PROJECT DESCRIPTION

The services requested of the Authority include only the provision of a portion of the funds necessary for TxDOT to complete the right-of-way acquisitions and utility adjustments necessary for TxDOT's US 62/180 – Montana Avenue Phase II Project, as more fully enumerated below.



[END OF EXHIBIT]



## **EXHIBIT “B”**

### **MONTANA AVENUE RIGHT-OF-WAY ACQUISITION & UTILITY ADJUSTMENT PROJECT RESPONSIBILITIES**

- 1. PLANNING: TxDOT**
- 2. DESIGN: TxDOT**
- 3. ENVIRONMENTAL PERMITTING: TxDOT**
- 4. RIGHT-OF-WAY ACQUISITION: TxDOT**
- 5. RIGHT-OF-WAY ACQUISITION FUNDING: AUTHORITY (Partial - VRF)**
- 6. CONSTRUCTION LETTING: TxDOT**
- 7. CONSTRUCTION: TxDOT**
- 8. PERFORMANCE STANDARDS: TxDOT**
- 9. MARKETING AND PUBLIC OUTREACH: TxDOT**
- 10. UTILITY RELOCATION: TxDOT**
- 11. UTILITY RELOCATION FUNDING: AUTHORITY (Partial - VRF)**
- 12. OTHERS: N/A**

[END OF EXHIBIT]

## **EXHIBIT “C”**

### **MONTANA AVENUE RIGHT-OF-WAY ACQUISITION & UTILITY ADJUSTMENT PROJECT BUDGET**

<b>DESCRIPTION</b>	<b>TOTAL ESTIMATED COST</b>	<b>CRRMA PAYS WITH VRF FUNDS*</b>
<b>ROW ACQUISITION &amp; UTILITY RELOCATIONS</b>	<b>\$ 12,099,054.16</b>	<b>\$ 381,120.21</b>
<b>PERMITS &amp; SERVICES</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>ENGINEERING</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>CONSTRUCTION</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>MISCELLANEOUS</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>TOTAL</b>	<b>\$ 12,099,054.16</b>	<b>\$ 381,120.21</b>

\*NOTE: The permission granted by this Agreement for the Authority’s use of VRF bond proceeds anticipates the use of 2013 bond proceeds. However, the Authority is also permitted to utilize 2017 VRF bond proceeds for such services, as it deems necessary. Further, the County has requested that these funds be paid in two disbursements:

- the initial disbursement shall be made in the amount of \$190,560.11 by August 31, 2021;
- the second disbursement shall be made in the amount of \$190,560.10 by August 31, 2022.

[END OF EXHIBIT]