CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **City Manager**

AGENDA DATE: **June 29, 2010**

CONTACT PERSON/PHONE: **Paul A. Braden, Bond Counsel, 351-6053**
William F. Studer, Jr., Deputy City Manager, 541-4252

DISTRICT(S) AFFECTED: All Districts

SUBJECT:
Resolution authorizing the Mayor to sign an Agreement by and between the City of El Paso and the Camino Real Regional Mobility Authority for the assignment of Tax Increment Funds collected from Transportation Reinvestment Zone Number Three, City of El Paso Texas, to provide the City's share of funding for one of the projects identified within the 2008 Comprehensive Mobility Plan (Loop 375 NE) as the recipient of Zone funds.

BACKGROUND / DISCUSSION:
As part of the funding plan for the Comprehensive Mobility Plan (CMP), Transportation Reinvestment Zone revenues were programmed to several projects within the CMP. This agreement assigns the revenues collected in TRZ #3 for the Loop 375 improvements in the Northeast to the Camino Real Regional Mobility Authority (CRRMA) and establishes the CRRMA as the party responsible to develop the project in accordance with all TXDOT and federal requirements within a 5 year period. Since the City established two reinvestment zones to maintain contiguity of properties within the zone, a new agreement is required with the CRRMA that reflects the new zones and the projects specific to each of the zones. The previous agreement is terminated.

PRIOR COUNCIL ACTION:
July 22, 2008 – Council endorses 2008 Comprehensive Mobility Plan
August 19, 2008 – Council enters into a Memorandum of Understanding with the MPO, TXDOT and CRRMA
May 25, 2010 – Council adopts two new Transportation Reinvestment Zones

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required)_____ **FINANCE:** (if required)_____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** 6/22/10

RESOLUTION

WHEREAS, on July 22, 2008 the City Council of the City of El Paso (the "City") endorsed the 2008 Comprehensive Mobility Plan (the "2008 CMP") which identified transportation projects vital to improving the region's transportation system by providing multiple modes of transportation and projects that facilitate the safe and reliable movement of goods and people;

WHEREAS, on August 19, 2008 the City entered into a Memorandum of Understanding with the Metropolitan Planning Organization (the "MPO"), TxDOT, and the Camino Real Regional Mobility Authority (the "CRRMA") to work in a cooperative manner to complete the projects identified in the 2008 CMP;

WHEREAS, on May 25, 2010, the City adopted Ordinance No. 017333 establishing Transportation Reinvestment Zone Number Three, City of El Paso, Texas (the "Zone") to promote transportation projects described by Section 222.104, Transportation Code, as amended, that cultivate development and redevelopment of the Zone, pursuant to Section 222.106, Transportation Code, as amended (the "Act");

WHEREAS, the City will pay into the Tax Increment Fund an amount equal to the Tax Increment from the Zone, in accordance with Section 222.106(h) of the Act;

WHEREAS, in accordance with Section 222.106(i) of the Act, money deposited to the Tax Increment Fund must be used to fund projects authorized under Section 222.104, subject to the provisions of Section 222.106(l) of the Act."

WHEREAS, the City and the CRRMA have determined that it would be desirable and further the public purposes of the Act for the CRRMA to enter into Pass-through Agreements with the Texas Department of Transportation for the development of the projects;

WHEREAS, the City and the CRRMA desire that, effective with the execution and delivery of the Pass-through Agreement by and between the CRRMA and the Texas Department of Transportation, the City pledge, assign and agree to pay to the CRRMA all amounts deposited in the Tax Increment Fund upon receipt to provide the City's share of funding for one of the projects identified within the 2008 CMP, which is Loop 375 NE, as the recipient of Zone funds.

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement by and between the **CITY OF EL PASO** and the **CAMINO REAL REGIONAL MOBILITY AUTHORITY** for the assignment of Tax Increment Funds collected from Transportation Reinvestment Zone Number Three, City of El Paso,

Texas, to provide the City's share of funding for one of the projects identified within the 2008 Comprehensive Mobility Plan [Loop 375 NE], as the recipient of Zone funds.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
William F. Studer, Jr., Deputy City Manager
Administration and Financial Services

STATE OF TEXAS §

COUNTY OF EL PASO §

AGREEMENT WITH RESPECT TO
TRANSPORTATION REINVESTMENT ZONE NUMBER THREE

THIS AGREEMENT is made by and between the City of El Paso, Texas, a municipal corporation organized under the laws of the State of Texas (the "City"), and the Camino Real Regional Mobility Authority, a regional mobility authority organized and existing under Chapter 370 of the Texas Transportation Code, as amended (the "CRRMA").

W I T N E S S E T H:

WHEREAS, on July 22, 2008 the City Council of the City of El Paso endorsed the 2008 Comprehensive Mobility Plan (the "2008 CMP") which identified transportation projects vital to improving the region's transportation system by providing multiple modes of transportation and projects that facilitate the safe and reliable movement of goods and people;

WHEREAS, on August 19, 2008 the City Council of the City of El Paso entered into a Memorandum of Understanding with the CRRMA to work in a cooperative manner to complete the projects identified in the 2008 CMP;

WHEREAS, the City has established Transportation Reinvestment Zone Number Three, City of El Paso, Texas (the "Zone") to promote transportation projects described by Section 222.104 of the Texas Transportation Code, as amended ("Section 222.104") that cultivate development and redevelopment of the Zone, pursuant to Section 222.106 of the Texas Transportation Code, as amended (the "Act");

WHEREAS, the City will pay into the Tax Increment Fund (as defined in Section I.A hereof) an amount equal to the Tax Increment produced by the City, in accordance with Section 222.106(h) of the Act;

WHEREAS, in accordance with Section 222.106(i) of the Act, money deposited to the Tax Increment Fund must be used to fund projects authorized under Section 222.104;

WHEREAS, the City and the CRRMA intends to enter into one or more agreements (the "Pass-through Agreement") with the Texas Department of Transportation under Section 222.104 for the design, development, financing, construction, maintenance, or operation by the City of the Project (as defined in Article I hereof) located within the Zone;

WHEREAS, the City and the CRRMA have determined that it would be desirable and further the public purposes of the Act for the CRRMA to negotiate and also be a party to the Pass-through Agreement for the development of such Project;

WHEREAS, the City and the CRRMA desire that, effective with the execution and delivery of a Pass-through Agreement for the development of the Project, the CRRMA obtain debt financing for the applicable Project;

WHEREAS, pursuant to Section 370.303 of the Texas Transportation Code, the City is authorized to enter into and make payments under agreements with regional mobility authorities (such as the CRRMA) to acquire, construct, maintain, or operate a transportation project, including agreements to pay the principal of, and interest on, bonds, notes, or other obligations issued by a regional mobility authority;

WHEREAS, on February 23, 2010, the CRRMA and the City entered into an amended and restated agreement (the "Previous Agreement") for the development and construction of the Project and other transportation projects and the transfer and pledge of revenues relating to the City's Transportation Reinvestment Zone Number One (the "TRZ No. 1") which had been created by the City;

WHEREAS, the City had certain concerns with respect to the establishment of the TRZ No. 1 and determined that it was in the best interest of the City to establish two transportation reinvestment zones, including the Zone, in partial replacement of the TRZ No. 1;

WHEREAS, TRZ No. 1 has been repealed and the Zone has been established; and

WHEREAS, no CRRMA Obligations under the Previous Agreement have been issued and the CRRMA and the City desire to terminate the Previous Agreement and enter into this Agreement and the TRZ No. 2 Agreement (as defined below) in place thereof;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed that the Previous Agreement is hereby terminated in its entirety and the parties hereby agree as follows:

I.
DEFINITIONS

"Act" shall mean Section 222.106, Transportation Code, as amended.

"Agreement" shall mean this Agreement between the City and the CRRMA.

"Appropriate" or "Appropriated" shall mean the adoption by the City Council of a budget or amendments to the budget for a Fiscal Year which includes the TRZ Contract Payments and any other payments required to be made by the City under this Agreement during the respective Fiscal Year.

"Available Funds" shall mean money Appropriated by the City from any lawfully available funds of the City, including money in the City's general fund that may lawfully be used with respect to any payment obligated or permitted under this Agreement.

"Captured Appraised Value" shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1 of any year less the Tax Increment Base of the Zone.

"City" shall mean the City of El Paso, Texas.

"City Council" shall mean the City Council of the City.

"CRRMA" shall mean the Camino Real Regional Mobility Authority.

"CRRMA Obligations" shall mean the bonds, loans, notes or other contractual obligations which the CRRMA may incur from time to time pursuant to Article III hereof to finance the Project.

"CRRMA Obligation Payment Date" shall mean the first payment date on any outstanding CRRMA Obligation in which there is not adequate capitalized interest set aside to make all payments due on such date and any payment date thereafter for so long as the CRRMA Obligations are outstanding.

"Debt Governance Document" shall mean collectively one or more trust indentures, bond resolutions, loan agreements, resolutions and other applicable documents which authorize the issuance, and control the terms, of one or more CRRMA Obligations.

"Event of Nonappropriation" shall mean the failure of the City to Appropriate for any Fiscal Year, sufficient funds to pay the TRZ Contract Payments, or the reduction of any previously Appropriated money to an amount insufficient to permit the City to pay the TRZ Contract Payments from Available Funds.

"Fiscal Year" shall mean the 12 month fiscal period of the City currently commencing on September 1, and ending on August 31 of the following year, or such other annual accounting period as the City may hereafter adopt.

"Governmental Accounting Standards Board" shall mean the recognized official source of generally accepted accounting principles (GAAP) for state and local governments.

"Interlocal Cooperation Act" shall mean Chapter 791, Government Code, as amended.

"Pass-through Agreement" shall mean one or more agreements between the Texas Department of Transportation and the CRRMA to be entered into pursuant to Section 222.104 in furtherance of the Project.

"Paying Agent" shall mean the financial institution, if any, designated as paying agent or trustee in the Debt Governance Document or other agreement relating to the administration or payment of the applicable CRRMA Obligations.

"Payment Fund" shall mean one or more funds established by the CRRMA in the Debt Governance Document into which payments made pursuant to this Agreement are to be deposited.

"Project" shall refer to the project identified within the 2008 Comprehensive Mobility Plan as recipients of Zone funds; namely Loop 375 at NE, such Project to be the subject of one or more Pass-through Agreements.

"Section 222.104" means Section 222.104, Texas Transportation Code, as amended.

"Tax Increment" shall mean the amount of property taxes levied and collected each year by the City on the Captured Appraised Value.

"Tax Increment Base" shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1 of the year in which the Zone was designated as a transportation reinvestment zone.

"Tax Increment Fund" shall mean the Tax Increment Fund created by the City for the Zone pursuant to the TRZ Ordinance including any subaccount therein into which all Tax Increment shall be deposited by the City.

"TRZ Contract Payment" shall mean, while any CRRMA Obligations are outstanding, an amount of money which, when added to the amount then on deposit in the Payment Fund, will equal the amount of (i) interest to become due on all the outstanding CRRMA Obligations on the next CRRMA Obligation Payment Date, (ii) the principal portion of the CRRMA Obligations then due, and (iii) the reasonable fees and expenses of the Paying Agent, if any.

"TRZ No. 2 Agreement" shall mean the Agreement with respect to Transportation Reinvestment Zone Number Two between the City and the CRRMA of even date herewith.

"TRZ Ordinance" shall mean Ordinance No. 017333 adopted by the City Council on May 25, 2010 establishing the Zone and the Tax Increment Fund, as such TRZ Ordinance may be amended from time to time.

"Zone" shall mean Transportation Reinvestment Zone Number Three City of El Paso, Texas which the City has created pursuant to the TRZ Ordinance.

II.
PASS-THROUGH AGREEMENT

In accordance with Texas law, including without limitation the Interlocal Cooperation Act, and in consideration of the mutual covenants made in this Agreement, the CRRMA agrees to negotiate, finalize, execute and deliver to the Texas Department of Transportation the Pass-through Agreement(s) necessary to facilitate the design, development, financing, construction, maintenance and operation of the Project in exchange for the power to incur CRRMA Obligations. To the extent required by Texas Law in connection with the financing of the Project, the City agrees to also be a party to the Pass-through Agreement.

III.
CRRMA OBLIGATIONS

A. General Statement.

1. The parties have agreed that the CRRMA has the authority to issue CRRMA Obligations to develop the Project, which CRRMA Obligations are to be repaid, in whole or in part, from moneys to be paid by the City to the CRRMA from Tax Increment and other Available Revenues pursuant to this Agreement; provided, however, that the aggregate principal amount of such obligations and any obligations issued by the CRRMA in connection with the TRZ No. 2 Agreement shall not exceed $70 million plus all related financing costs. The City acknowledges that it has received at least 90 days prior notice of the issuance of the CRRMA Obligations in accordance with Section 370.261 of the Texas Transportation Code.

2. Notwithstanding anything in this Article III to the contrary, in the event that (i) the interest rate on a CRRMA Obligation (including a loan from the State Infrastructure Bank) is reasonably expected to exceed 5.0% (without reference to any subsidy), and/or (ii) such CRRMA Obligation cannot be structured as a direct subsidy "Build America Bond" (as defined in the American Recovery and Reinvestment Act of 2009), the City and the CRRMA agree that the following procedures shall apply. In such event, before issuing or incurring such CRRMA Obligation, the CRRMA shall provide notice to the City and upon notice, the CRRMA and the City shall meet and discuss in good faith a mutually satisfactory alternative financing program for the Project to be financed, in whole or in part. Such financing program shall have advantageous commercial terms available in the then-existing financial markets. In the event that the parties do not mutually determine, within sixty (60) days following such notice, a financing program for such Project with an interest rate lower than the interest rate on the proposed CRRMA Obligation, the CRRMA may issue or incur such CRRMA Obligation.

3. Unless otherwise agreed by the parties hereto, a minimum of 50% of any subsidy received in connection with any CRRMA Obligation which is issued as a "Build America Bond" shall be used to pay debt service on such CRRMA Obligation.

4. Unless otherwise agreed by the parties hereto, any reserve fund established in connection with the issuance of any CRRMA Obligations shall be funded (i) no more rapidly than level amortization over 60 months from the date of issuance of such obligations, (ii) from Tax Increment revenues and (iii) in accordance with applicable law, including Federal tax law.

5. The City represents that the Zone has been validly created and is currently in existence as of the date hereof.

B. Project Delivery and Execution. Upon receipt of all applicable approvals, including execution of this Agreement, the necessary Pass-through Agreement and any other related agreements, the CRRMA shall be responsible for the design, development, financing, construction, maintenance and operation of the Project, as more fully described within such approvals and agreements. The CRRMA, its consultants or contractors shall develop Project milestones and construction schedules, as applicable, for the Project and submit them to the City for informational purposes. The CRRMA, its consultants or contractors shall work diligently on

meeting said milestones during project development to complete construction plans and specifications that are acceptable and approved by the Texas Department of Transportation and that allow for construction of the Project. Project schedules may include multiple construction phases to complete the Project.

C. Power to Incur CRRMA Obligations. Subject to the terms of this Agreement, the CRRMA shall have the power from time to time to issue and incur CRRMA Obligations to develop the Project upon such terms and conditions as the CRRMA shall determine to be necessary or desirable to fund the Project; provided however, that the CRRMA shall seek to capitalize interest on the Project to the greatest extent permitted by applicable law (unless otherwise agreed by the City). The CRRMA Obligations may be in the form of one or more bonds, loans, notes, or other form of contractual obligations in exchange for the obligations of the CRRMA to repay such costs, in whole or in part, from future payments made by the City to the CRRMA pursuant to this Agreement. The number, type and frequency of such CRRMA Obligations shall be in the sole discretion of the CRRMA; provided, however, that the aggregate principal amount of such obligations and any obligations issued by the CRRMA in connection with TRZ Agreement No. 2 shall not exceed $70 million plus all related financing costs, as noted herein.

D. CRRMA Obligations.

1. To fund the Project, the CRRMA may issue its CRRMA Obligations from time to time in an aggregate amount necessary to finance and pay costs of the Project (including amounts necessary to fund reserves and capitalized interest accounts and to pay costs of issuance) which will be repaid by the CRRMA, in whole or in part, from payments made by the City pursuant this Agreement. The deposit and disbursement of CRRMA Obligations proceeds shall be made in accordance with the documents authorizing their issuance. The City shall have no financial obligation to make any principal or interest payment, in whole or in part, on behalf of the CRRMA to fund the CRRMA's obligations except in accordance with this Agreement.

2. CRRMA Obligations issued by the CRRMA shall be secured, in whole or in part, by funds deposited from time to time in the Payment Fund. The CRRMA agrees to provide to the City, upon request, copies of any proposed Debt Governance Document in connection with any issuance of CRRMA Obligations.

E. Accounting. Complete books and records shall be maintained by the City showing deposits to and disbursements from the Tax Increment Fund. Complete books and records shall be maintained by the Paying Agent (or in the absence of a Paying Agent, the CRRMA) showing deposits to and disbursements from the Payment Fund or other Project-related funds. 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 Act. Such books and records shall be available for examination by the duly authorized officers or agents of the City or the CRRMA during normal business hours upon request made not less than five (5) business days prior to the date of such examination. The City and the Paying Agent (or in the absence of a Paying Agent, the CRRMA) shall maintain such books and records as long as any CRRMA Obligations remain outstanding and for four (4) years thereafter, all subject to the requirements of the Act.

F. Pledge of Payment Fund. The CRRMA may pledge and assign all or a part of the Payment Fund and amounts therein to the owners and holders of CRRMA Obligations or to a trustee acting on their behalf.

G. Depository. Any moneys received from investing and reinvesting the moneys paid by the City to the CRRMA shall remain in the Payment Fund until used by the CRRMA for the purposes permitted by this Agreement; provided, however, that these funds shall be accounted for separately. Moneys in the Payment Fund may be invested and reinvested by the CRRMA only in investments which would be eligible for investment by the City pursuant to the provisions of the City's Investment Policy and the Public Funds Investment Act (Chapter 2256, Texas Government Code).

IV.
DUTIES AND RESPONSIBILITIES OF THE CITY

A. Tax Increment Fund. In the TRZ Ordinance, the City shall establish a separate fund (which may include subaccounts if necessary) in the City treasury into which the Tax Increment from the Zone shall be deposited (the "Tax Increment Fund"). During the term of this Agreement, contingent solely upon execution and delivery of a Pass-through Agreement for the development of the Project, the City will transfer to the Payment Fund, on a monthly basis on the first business day of each month thereafter, all monies then held in the Tax Increment Fund, and the City consents to the CRRMA's use of such Tax Increment as a pledge for, and to make payment on, the CRRMA Obligations. The City shall cooperate with the Paying Agent and the CRRMA in the efficient transfer of the Tax Increment to the Payment Fund in accordance with this Agreement and shall comply with all reasonable requests of the Paying Agent or the CRRMA related to such transfer and/or the administration of the Tax Increment Fund.

B. Levy of Tax Increment. Until the CRRMA has issued all CRRMA Obligations which the CRRMA is authorized to issue pursuant to Article III hereof and those CRRMA Obligations, together with interest thereon, have been fully paid or provision for payment thereof shall have been made in accordance with their terms, the City covenants and agrees to annually assess, levy and collect its ad valorem taxes within the Zone and not to terminate or dissolve the Zone.

C. TRZ Contract Payments.

1. The CRRMA shall include a covenant in each Debt Governance Document that at least thirty (30) days prior to every CRRMA Obligation Payment Date the Paying Agent (or in the absence of a Paying Agent, the CRRMA) shall provide to the City written notice of the amount of the TRZ Contract Payment due on such CRRMA Obligation Payment Date.

2. Subject to Article XV, the City shall pay to the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of such CRRMA Obligation), at least three (3) business days prior to each CRRMA Obligation Payment Date, the TRZ Contract Payments then due.

3. All TRZ Contract Payments shall be applied in accordance with the terms of any applicable Debt Governance Document pursuant to which the relevant CRRMA Obligations are issued.

4. To assist the City with its budgeting, the Paying Agent (or in the absence of a Paying Agent, the CRRMA) shall prepare a periodic report showing any balance maintained in the Payment Fund and the resulting schedule of anticipated TRZ Contract Payments, if any, after taking into account the projected Tax Increment and earnings on the Payment Fund; provided however, that the City shall be obligated to make the TRZ Contract Payments in accordance with the provisions of this Agreement regardless of the accuracy of such report. The information with respect to projected Tax Increment deposits shall be provided by the City. Such report shall be updated from time to time to take into account actual deposits to the Payment Fund and earnings thereon.

D. Current Expenses. The City's obligation to make the TRZ Contract Payments shall constitute a current expense of the City in the Fiscal Year during which such payments are due and shall not constitute an indebtedness of the City within the meaning of the laws of the State of Texas.

E. City's Obligation to be Absolute. Subject to the limitation set out in Article XV hereof, the obligations of the City hereunder shall be absolute and unconditional. The covenant to pay TRZ Contract Payments shall be an independent covenant. The City shall have no right to withhold, set-off or reduce the amount of TRZ Contract Payments or the obligation to make such TRZ Contract Payments or other payments when due hereunder regardless of any claim or dispute it may have regarding this Agreement or other agreements with the CRRMA. Subject to Article XV, there shall be no abatement of TRZ Contract Payments for any reason whatsoever.

Notwithstanding anything herein to the contrary, the obligation of the City to transfer the Tax Increment as set forth in this Agreement shall be absolute, unconditional and an independent covenant. During the term of this Agreement and thereafter until such time as all CRRMA Obligations issued and to be issued pursuant to this Agreement have been fully paid or provision for payment thereof shall have been made in accordance with their terms, the City will not suspend, offset, withhold, or discontinue any transfer of the Tax Increment required to be made by the City to the CRRMA pursuant to this Agreement regardless of any claim or dispute the City may have regarding this Agreement or other agreements with the CRRMA and will not terminate this Agreement except as specifically permitted by this Agreement.

F. Limitation of Amount of Payment. The obligation of the City to the CRRMA under this Agreement and the TRZ No. 2 Agreement is limited to the aggregate principal amount of $70 million plus all financing costs and interest charges for any bonds, loan, notes or other contractual obligations to finance the Project and projects authorized by the TRZ No. 2 Agreement. The City shall not be responsible for the payment of any project cost overrun in excess of $70 million nor the cost of financing any project cost overrun in excess of $70 million.

G. Allocated Funds; Limitation of Duties. The duty of the City to pay money to the CRRMA for any purpose under this Agreement is limited in its entirety by the provisions of this

Agreement. The payments and covenants herein provided for shall be the entire and complete compensation of the CRRMA for its services and expenses in connection herewith.

H. Collection and Payment of Tax Increment by the City. In consideration of the services to be provided by the CRRMA, which includes the development of transportation projects that will benefit the City and its residents, the City covenants and agrees that it will, as authorized under the Act and other applicable laws, continuously collect the Tax Increment during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City further covenants and agrees that it will make all payments as set forth in Section IV.A above, by a direct deposit into the Payment Fund, without counterclaim or offset.

I. Condition Precedent. Notwithstanding anything to the contrary herein, all obligations of the City hereunder with respect to the CRRMA Obligations issued to fund a project are contingent and conditioned upon the execution and delivery of the Pass-through Agreement necessary for the development of that project.

V.
PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by State law, no director or officer of the CRRMA, nor any employee or agent of the CRRMA, and no employee of the City, nor any councilmember, officer or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement, or the operations of the CRRMA or the City under the terms of this Agreement.

VI.
LAW TO BE OBSERVED

The City and the CRRMA at all times shall observe and comply with all applicable Federal and state laws, local laws, ordinances, orders, and regulations of the Federal, state, county or city governments.

VII.
INFORMATION & REPORTS

The CRRMA shall, at such times and in such form as the City may request, furnish periodic information concerning the status of the CRRMA and the performance of its obligations under this Agreement, and such other statements, certificates and approvals relative to the CRRMA as may be reasonably requested in writing by the City. The CRRMA shall also, at a minimum, make two (2) reports per year to the City Council. The first shall occur no later than May 1 of each year during the term of this Agreement and may coincide with any reports being provided relative to the CRRMA's Annual Report. The second report shall occur no later than six (6) months after the completion of the first report. Said reports shall include information on the current status of the Project, the current financial status of the Payment Fund(s) and the state of the CRRMA as a public entity in general. The City covenants and agrees that it shall provide the CRRMA with such information as may be necessary for the CRRMA to satisfy its continuing disclosure obligations and any other obligations as set forth in the documents authorizing

issuance of the CRRMA Obligations. The CRRMA is solely responsible for any and all reporting requirements necessitated by Federal or state funding of the CRRMA Obligations, including any reporting requirements under the American Recovery and Reinvestment Act of 2009; provided however, the CRRMA may contract with a third party such as the Paying Agent to fulfill any such reporting requirements..

VIII.
COORDINATION WITH CITY OFFICIALS

The CRRMA will coordinate its activities pursuant to this Agreement with the City Manager or the City Manager's designee.

IX.
ADDRESS AND NOTICE

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or hand delivered, to the CRRMA at the following address or such other address as may be provided by the CRRMA:

Camino Real Regional Mobility Authority
2 Civic Center Plaza, 9th Floor
El Paso, TX 79901
Attention: Executive Director

Any and all notices and communications under this Agreement shall be mailed by first-class mail, or hand delivered, to the City at the following addresses or such other address as may be provided by the City:

City of El Paso
2 Civic Center Plaza
El Paso, TX 79901
Attention: City Manager

X.
APPLICABLE LAWS

This Agreement is made subject to the constitution and laws of the State of Texas. Venue shall be in the County of El Paso.

XI.
CAPTIONS

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, or part of this Agreement.

XII.
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, except that the CRRMA may assign its rights hereunder to a Paying Agent under an Debt Governance Document to secure CRRMA Obligations.

XIII.
TERM AND TERMINATION; ZONE BOUNDARIES & DISSOLUTION

A. Effective Date. This Agreement shall become effective, and its initial term shall begin, on the date of execution by both parties.

B. Termination.

1. This Agreement shall terminate automatically at such time as all CRRMA Obligations issued pursuant to this Agreement have been fully paid.

2. Prior to the issuance of any CRRMA Obligations, a party may terminate its performance under this Agreement without cause only upon agreement in writing signed by both parties. Subsequent to the issuance of any CRRMA Obligations, the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation), in accordance with the terms of any applicable Debt Governance Document, shall also be required for any such termination.

3. In the event the Project approvals and agreements referenced within Section III.B above are revoked by Federal or state agencies for any particular Project and the CRRMA is no longer permitted to pursue the development of said Project, the City shall be entitled to terminate the obligations arising under this Agreement only for such Project.

4. In the event the approvals and agreements referenced within Section III.B above are revoked for the Project, the City shall be entitled to terminate, by written notice to the CRRMA, the authority of the CRRMA to issue additional CRRMA Obligations under this Agreement.

5. In the event the Project is not substantially completed and open to the traveling public within five years from March 1, 2010, the City shall be entitled to terminate, by written notice to the CRRMA, the authority of the CRRMA to issue additional CRRMA Obligations under this Agreement to fund any Project the development of which has not commenced.

6. In addition, the CRRMA may, by written notice to the City, terminate its performance under this Agreement upon default by the City or an Event of Nonappropriation, and the City may, by written notice to the CRRMA, terminate the authority of the CRRMA to issue additional CRRMA Obligations under this Agreement upon default by the CRRMA or an

Event of Nonappropriation. Default by a party shall occur if the party fails to perform or observe, in any material respect, any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred shall have the right to take the action described above as of the sixtieth (60th) day following the receipt by the defaulting party of a notice describing such default and intended action if such default is then continuing; provided, however, that such action may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default following such sixtieth (60th) day.

7. Notwithstanding anything in this Article XIII to the contrary but subject to Article XV, no termination of this Agreement will affect the obligations of the City to make the TRZ Contract Payments in accordance with the terms of this Agreement (subject to Article XV) and to transfer the Tax Increment to the CRRMA as long as any CRRMA Obligations remain outstanding.

C. Zone Boundaries. As long as the City's obligation hereunder to make the TRZ Contract Payments has not been amended or altered without the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) in accordance with the terms of this Agreement and the City continues to Appropriate funds for such payments, the City may amend, supplement, reconstitute or alter the Zone to (i) remove or add property and otherwise change boundaries as long as the Project is still within the Zone (ii) make such changes which are necessary to assure that the Tax Increment may be legally collected and transferred and (iii) make such other changes to the Zone to ensure that the Zone is in compliance with applicable law.

D. Dissolution of Zone. Prior to the issuance of any CRRMA Obligations, the City agrees not to dissolve or terminate the Zone unless it makes arrangements, which the CRRMA has approved in writing, to provide for the payment in full of the CRRMA Obligations which the CRRMA is authorized to issue pursuant to Article III hereof. Subsequent to the issuance of any CRRMA Obligations, the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) shall also be required (in accordance with the terms of any applicable Debt Governance Document) for any such dissolution. Should State law repeal the Act which authorized the creation of the Zone and require termination of the Zone, the City shall be authorized to terminate the Zone and terminate this Agreement in its entirety with no further obligation of the City to the CRRMA; provided, however, that the termination of the Zone shall not relieve the City of its obligations to make arrangements, which the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) has approved in accordance to the terms of any applicable Debt Governance Document, to provide for the payment in full of the CRRMA Obligations which the CRRMA has issued or incurred pursuant to Article III hereof prior to such termination.

XIV.
AMENDMENT OR MODIFICATIONS

Prior to the issuance of any CRRMA Obligations, any changes, amendments or modifications to this Agreement shall occur only by mutual, written consent of the parties. Subsequent to the issuance of any CRRMA Obligations, the consent of the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) shall also be required (in accordance with the terms of any applicable Debt Governance Document) for any such amendment or modification. The foregoing notwithstanding and subsequent to the issuance of any CRRMA obligation, no amendment shall become effective until the parties have received an opinion of nationally-recognized bond counsel selected by the CRRMA and approved by the City to the effect that such amendment will not adversely impair the rights of the owners of any outstanding bonds, notes or other obligations issued by the CRRMA. Said review by bond counsel to occur within 30 days from the date a written amendment is proposed by either party.

XV.
APPROPRIATION

A. Subject to Appropriation. Notwithstanding anything herein to the contrary, the City's obligation to make TRZ Contract Payments is subject to the sufficiency of Available Funds and the CRRMA acknowledges that the City has no legal obligation to Appropriate funds to make TRZ Contract Payments.

B. Notice. The City shall provide the CRRMA and the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) with written notice within 72 hours of (i) the presentation of any proposed budget to the City Council which does not include sufficient funds to pay the TRZ Contract Payments or any other amounts due hereunder; or (ii) the occurrence of action by the City Council which constitutes an Event of Nonappropriation or a failure to Appropriate funds sufficient to pay TRZ Contract Payments due during the current or succeeding Fiscal Year.

C. Termination Upon Event of Nonappropriation. Upon an Event of Nonappropriation, the City may terminate its obligation to make the TRZ Contract Payments by giving notice to the CRRMA and, if CRRMA Obligations have been issued, to the Paying Agent (or in the absence of a Paying Agent, the holder/obligor of the applicable CRRMA Obligation) and such termination will not be a default by the City under this Agreement. Notwithstanding anything herein to the contrary, no termination of this Agreement or any obligation to make TRZ Contract Payments because of an Event of Nonappropriation will affect the obligations of the City to transfer the Tax Increment to the CRRMA in accordance with the terms of this Agreement as long as any CRRMA Obligations remain outstanding.

XVI.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

EXECUTED this ____ day of _____, 2010.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Charles McNabb
City Attorney

APPROVED AS TO CONTENT:

_____
William F. Studer
Deputy City Manager
Finance and Public Safety

CAMINO REAL REGIONAL MOBILITY AUTHORITY

_____
Raymond L. Telles
Executive Director