

RESOLUTION

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

That the Mayor be authorized to sign an Amended and Restated Agreement by and between the City of El Paso, Texas and the Camino Real Regional Mobility Authority.

ADOPTED this ____ day of _____, 2010.

CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Charles F. McNabb
City Attorney

STATE OF TEXAS §

COUNTY OF EL PASO §

**AMENDED AND RESTATED AGREEMENT
BY AND BETWEEN THE CITY OF EL PASO, TEXAS
AND THE CAMINO REAL REGIONAL MOBILITY AUTHORITY**

THIS AMENDED AND RESTATED 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 or is in the process of establishing a Transportation Reinvestment Zone (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 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 Projects (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 Projects;

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

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; and

WHEREAS, on November 17, 2009, the CRRMA and the City entered into an agreement for the development and construction of one or more of the Projects and the transfer and pledge of Zone revenues (the “Original Agreement”); and

WHEREAS, no CRRMA Obligations (as defined below) have yet been issued and the CRRMA and the City desire to amend and restate the Original Agreement in its entirety;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed, and the Original Agreement is hereby amended and restated in its entirety, as follows:

I. DEFINITIONS

“Act” shall mean Section 222.106, Transportation Code, as amended.

“Agreement” shall mean this Amended and Restated 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 (i) money in the City’s general fund that may lawfully be used with respect to any payment obligated or permitted under this Agreement, and (ii) any unintended surplus maintenance tax funds of the City at the end of each Fiscal Year after payment of all maintenance and operating expenses of the City for that Fiscal Year.

“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 one or more of the Projects.

“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.

“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 any other amounts due hereunder, or the reduction of any previously Appropriated money to an amount insufficient to permit the City to pay the TRZ Contract Payments or any other amounts due hereunder from Available Funds.

“Fiscal Year” shall mean a 12 month fiscal period of the City commencing on October 1, and ending on September 30 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.

“Indenture” shall mean one or more trust indentures (or similar documents) entered into between the CRRMA and the Trustee which authorize the issuance of one or more series of CRRMA obligations.

“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 Projects.

“Pledged Revenue Fund” shall mean one or more fund established by the CRRMA in documents relating to the incurrence of CRRMA Obligations into which payments made pursuant to this Agreement are to be deposited.

“Projects” shall refer to the four (4) projects identified within the 2008 Comprehensive Mobility Plan as recipients of Zone funds; namely, Loop 375 at NE, Loop 375 at Zaragoza, Loop 375 at I-10, and the I-10 Aesthetic Project (as defined in such 2008 Comprehensive Mobility Plan), such Projects 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.

“Trustee” shall mean the financial institution so designated in the Indenture relating to the incurrence of CRRMA Obligations.

“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 Pledged Revenue Fund, will equal the amount of (i) interest to become due on all the outstanding CRRMA Obligations on the next CRRMA Obligation Payment Date, and (ii) the principal portion of the CRRMA Obligations then due.

“TRZ Ordinance” shall mean the ordinance adopted by the City Council establishing the Zone and the Tax Increment Fund, as such TRZ Ordinance may be amended from time to time.

“Zone” shall mean the Transportation Reinvestment Zone which the City has created or is in the process of the creating 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 necessary to facilitate the design, development, financing, construction, maintenance and operation of the Projects in exchange for the power to incur CRRMA Obligations. To the extent required by Texas Law in connection with the financing of the Projects, 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 Projects, 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 shall not exceed \$70 million plus all related financing costs.

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, 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 issuance of CRRMA Obligations is contingent and conditioned upon the valid creation and existence of the Zone. To the extent the Zone is not in existence as of the date hereto, the City shall promptly follow the necessary statutory procedure to establish the Zone and thereafter submit the TRZ Ordinance to the City Council for its consideration.

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 Projects, as more fully described within such approvals and agreements. The CRRMA shall develop Project milestones and construction schedules, as applicable, for each of the Projects and submit them to the City for informational purposes. The CRRMA 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 Projects. Project schedules may include multiple construction phases to complete the Projects.

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 Projects upon such terms and conditions as the CRRMA shall determine to be necessary or desirable to fund the Projects; provided however, that the CRRMA shall seek to capitalize interest on the Projects 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 shall not exceed \$70 million plus all related financing costs, as noted herein.

D. CRRMA Obligations.

1. To fund the Projects, the CRRMA may issue its CRRMA Obligations from time to time in an aggregate amount necessary to finance and pay costs of the Projects (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 Pledged Revenue Fund. The CRRMA agrees to provide to the City, upon request, copies of any proposed trust indenture, bond resolution, loan agreement or other financing documents in connection with any issuance of CRRMA Obligations.

E. Accounting. Complete books and records shall be maintained showing deposits to and disbursements from the Tax Increment Fund of the City and the Pledged Revenue Fund or other funds of the CRRMA, which 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 CRRMA shall maintain such books and records throughout the term of this Agreement and for four (4) years thereafter, all subject to the requirements of the Act.

F. Pledge of Pledged Revenue Fund. The CRRMA may pledge and assign all or a part of the Pledged Revenue 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 Pledged Revenue 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 Pledged Revenue 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 all Tax

Increment 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 one or more of the Projects, the City will transfer to the CRRMA, 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 instructs the CRRMA to use such Tax Increment as a pledge for, and to make payment on, the CRRMA Obligations. If the City fails to deposit such monies directly into the Pledged Revenue Fund as required by Section IV.H hereof, upon receipt the CRRMA shall deposit such funds in the Pledged Revenue 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 Indenture that at least thirty (30) days prior to every CRRMA Obligation Payment Date the Trustee 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 Trustee, at least two (2) business days prior to each CRRMA Obligation Payment Date, the TRZ Contract Payments then due.

3. All TRZ Contract Payments shall be applied by the Trustee in accordance with the applicable Indenture pursuant to which the relevant CRRMA Obligations are issued.

4. To assist the City with its budgeting, the CRRMA, the City and their respective consultants shall prepare reasonable projections of the Tax Increment, any amounts maintained in the Pledged Revenue Fund and the resulting schedule of anticipated TRZ Contract Payments, if any, after taking into account the projected Tax Increment and earnings on the Pledged Revenue 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 projections. Such projections and schedules shall be updated from time to time to take into account actual deposits to the Pledged Revenue Fund.

D. Current Expenses. The City’s payment obligations under this Agreement 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 Section 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. There shall be no abatement of TRZ Contract Payments for any reason whatsoever. The obligation of the City to transfer the Tax Increment as set forth in this Agreement shall be absolute and unconditional, and until such time as this Agreement, and 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 or discontinue any transfer of the Tax Increment required to be made by the City to the CRRMA pursuant to this Agreement 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 is limited to the aggregate principal amount of \$70 million plus all financing costs, and interest charges related to the CRRMA Obligations authorized under this 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 Pledged Revenue 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 CRRMA at all times shall observe and comply with all 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 Projects, the current financial status of the pledged revenue 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.

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. However, for the Project identified as the Aesthetic Project, the CRRMA shall coordinate with the I-10 Aesthetics Steering Committee ("Steering Committee"). The City Manager shall identify the members of the Steering Committee from the City, including at least one (1) member from the Museums and Cultural Affairs Department and two (2) members from the Engineering Department. The Texas Department of Transportation may also participate in the Steering Committee. The purpose of such Committee shall be to review and recommend a comprehensive plan for aesthetic improvements within the Aesthetic Project's limits, including the recommendation and prioritization of specific locations for improvements.

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 the Trustee under any trust indenture or other instrument 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 Trustee (in accordance with the terms of the applicable Indenture) 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 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 all Projects, 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 Projects are 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, 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. 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, 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 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 Trustee) 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 Projects are 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 Trustee shall also be required (in accordance with the terms of the applicable Indenture) 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 Trustee has approved in accordance with the terms of the applicable Indenture, 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 Trustee shall also be required (in accordance with the terms of the applicable Indenture) for any such amendment or modification. The foregoing notwithstanding, 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. The City's obligation to make TRZ Contract Payments is subject to the sufficiency of Available Funds. The City presently intends to continue this Agreement as long as the CRRMA Obligations are outstanding and to pay all TRZ Contract Payments and other payments required hereunder in accordance with the terms hereof. The City reasonably believes that Available Funds in amounts sufficient to make all such TRZ Contract Payments will be available for such purposes. The City acknowledges that the CRRMA is going to issue CRRMA Obligations to finance the Projects in reliance on this Agreement and any failure to appropriate funds to make payments hereunder could have materially-adverse consequences to the CRRMA and the Projects.

B. Notice. The City shall provide the CRRMA and the Trustee 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.

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