

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, in accordance with Section 222.106 and 222.108 of the Texas Transportation Code, as amended (collectively, the “TRZ Act”), the City has previously established Transportation Reinvestment Zone Number Three, City of El Paso, Texas (the “Zone”) to promote transportation projects that cultivate development and redevelopment of the Zone;

WHEREAS, Section 370.303 of the Texas Transportation Code authorizes governmental entities, including the City, to enter into and make payments under agreements with regional mobility authorities in connection with the financing, acquisition, construction, or operation of 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, the City and the CRRMA have determined that it would be desirable and further the public purposes of the TRZ Act and other applicable sections of the Transportation Code for the CRRMA to develop one or more transportation projects within the Zone for the City, and obtain debt financing for all or a portion of such projects;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereby agree as follows:

**I.
DEFINITIONS**

As used herein, the following terms shall have the meanings specified below:

“Agreement” means this Agreement between the City and the CRRMA.

“Appropriate” or “Appropriated” means 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” means money Appropriated by the City from any lawfully available funds of the City, including money in the City’s Tax Increment Fund that may lawfully be used with respect to any payment obligated or permitted under this Agreement.

“Captured Appraised Value” means 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” means the City of El Paso, Texas.

“City Council” means the City Council of the City.

“CRRMA” means the Camino Real Regional Mobility Authority.

“Debt Governance Document” means 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 Debt Obligations.

“Debt Obligations” means the bonds, loans, notes or other contractual obligations which the CRRMA may incur from time to time to finance one or more Projects.

“Event of Default” means a party’s failure to perform or observe, in any material respect, any of the material terms and conditions of this Agreement required to be performed or observed by such party and such failure continuing for a period of 60 calendar days after written notice specifying such failure is given to such party. An Event of Nonappropriation, in and of itself, is not an Event of Default.

“Event of Nonappropriation” means 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” means 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” means the recognized official source of generally accepted accounting principles (GAAP) for state and local governments.

“Lender” means any financial institution or governmental agency, including the State Infrastructure Bank, which lends or otherwise provides funds to the CRRMA to finance all or a portion of the Project, as memorialized through the CRRMA’s issuance or incurrence of a Debt Obligation.

“Payment Date” means each date on which a payment is due on any outstanding Debt Obligation in which there are not adequate funds deposited to the applicable Payment Fund(s), or otherwise set aside, to make all payments due on all outstanding Debt Obligations on such date and the immediately succeeding payment date thereafter.

“Payment Fund” means one or more funds established by the CRRMA into which payments made pursuant to this Agreement are to be deposited and thereafter used to pay principal and interest on the outstanding Debt Obligations.

“Project” means the design, development, construction, improvement, extension and/or expansion of a multi-lane roadway with a functional classification greater than a local road or rural minor collector connecting FM3255 (Martin Luther King Jr. Boulevard) and State Loop 375 through the northeast section of the City commonly known as “Borderland Expressway Project,” or any of its component parts, all located within the Zone and in conformity with the City of El Paso’s 2008 Comprehensive Mobility Plan (CMP). The Borderland Expressway Project was originally known as the “Northeast Parkway Corridor,” which is the name referenced in the CMP. The promotion of projects included in the CMP was a basis for creating the Zone.

“State” means the State of Texas.

“Tax Increment” means the amount of property taxes levied and collected each year by the City on the Captured Appraised Value.

“Tax Increment Base” means 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” means 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 Act” means collectively Sections 222.106 and 222.108 of the Texas Transportation Code, as amended.

“TRZ Contract Payment” means, while any Debt 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 Debt Obligations on the next Payment Date, and (ii) the principal portion of the Debt Obligations then due.

“TRZ Ordinance” means 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” means Transportation Reinvestment Zone Number Three, City of El Paso, Texas which the City has created pursuant to the TRZ Ordinance.

II. DEBT OBLIGATIONS

A. General; Project Coordination.

1. In conformity with the City’s CMP and the provisions of the TRZ Ordinance, the CRRMA is hereby authorized to issue Debt Obligations to finance all or a portion

of the Project, which Debt Obligations are to be repaid, in whole or in part, from moneys to be paid by the City to the CRRMA from the Tax Increment and the TRZ Contract Payments. In addition, the CRRMA may coordinate and/or be responsible for the design, development, construction, maintenance and/or operation of the Project.

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

3. The City acknowledges that it has received at least 90 days prior notice of the issuance of the Debt Obligations applicable to the Project in accordance with Section 370.261 of the Texas Transportation Code.

B. Terms of Debt Obligations.

1. The CRRMA may issue its Debt Obligations from time to time in an amount necessary to finance and pay all or a portion of the costs of the Project (including any 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 Debt Obligations may be in the form of one or more bonds, loans, notes, or other forms 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 terms, number, type and frequency of such Debt Obligations shall be in the sole discretion of the CRRMA. The deposit and disbursement of Debt Obligations proceeds shall be made in accordance with the respective Debt Governance Document. 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. Debt 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 Debt Obligations.

C. 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 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 TRZ 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 as long as any Debt Obligations remain outstanding and for four (4) years thereafter, all subject to the requirements of the Act.

D. 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 Debt Obligations or to a trustee acting on their behalf.

E. 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 CRRMA pursuant to the provisions of the CRRMA's Investment Policy and the Public Funds Investment Act (Chapter 2256, Texas Government Code).

III.
DUTIES AND RESPONSIBILITIES OF THE CITY

A. Tax Increment Fund. In the TRZ Ordinance, the City established a separate fund in the City treasury into which the Tax Increment from the Zone is currently being deposited on a monthly basis (the "Tax Increment Fund"). Prior to execution of this Agreement, the City had been transferring funds from the Tax Increment Fund to the Payment Fund on a monthly basis. Upon execution of this Agreement, the City will cease making these monthly transfers to the Payment Fund. Upon issuance of a Debt Obligation by the CRRMA during the term of this Agreement, the City will transfer to the Payment Fund monies held in the Tax Increment Fund in an amount equal to the TRZ Contract Payment, and the City consents to the CRRMA's use of such Tax Increment as a pledge for, and to make payment on, the Debt Obligations. Such transfer shall occur as noted with Section III.C.2., below, but the CRRMA shall utilize previously transferred funds from the City ("Accumulated Funds") as initial payments for any such Debt Obligations. Upon use of all Accumulated Funds, any unused amounts in the Payment Fund remaining after a Payment Date shall be remitted to the Tax Increment Fund by the CRRMA within ten (10) days of such Payment Date, unless otherwise directed by the City. The City shall cooperate with 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 CRRMA related to such transfer and/or the administration of the Tax Increment Fund.

B. Levy of Tax Increment. Until all outstanding Debt Obligations, including interest thereon, have been paid in full or provision for payment thereof shall have been made in accordance with their respective 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. Up to (30) days prior to each Payment Date, the CRRMA shall provide to the City written notice of the amount of any TRZ Contract Payment due on such Payment Date.

2. Subject to Article XIV, the City shall transfer to the CRRMA, at least ten (10) business days prior to each Payment Date, any TRZ Contract Payments then due on any outstanding Debt Obligation.

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

4. To assist the City with its budgeting, 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.

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.

E. City's Obligation with respect to TRZ Contract Payments. Subject to the limitation set out in Article XIV 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 XIV, there shall be no abatement of TRZ Contract Payments for any reason whatsoever.

F. City's Obligation with respect to Tax Increment. Notwithstanding anything herein to the contrary, the obligation of the City to transfer a portion of 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 Debt 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. 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.

G. 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 TRZ 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 this Section III., by a direct deposit into the Payment Fund, without counterclaim or offset.

**IV.
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.

**V.
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.

**VI.
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 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 Debt Obligations. The CRRMA is solely responsible for any and all reporting requirements necessitated by Federal or state funding of the Debt Obligations; provided however, the CRRMA may contract with a third party such as a disclosure agent to fulfill any such reporting requirements.

**VII.
COORDINATION WITH CITY OFFICIALS**

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

**VIII.
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
801 Texas Avenue
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
300 N. Campbell
El Paso, TX 79901
Attention: City Manager

**IX.
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.

**X.
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.

**XI.
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 Lender under a Debt Obligation to secure such Debt Obligation.

**XII.
TERM, TERMINATION, EVENTS OF DEFAULT, REMEDIES,
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 Without Cause.

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

2. Prior to the issuance of any Debt Obligations, a party may terminate its obligations under this Agreement without cause by providing 30 days prior written notice to the other party.

3. Following the issuance of, and as long as there are outstanding, any Debt Obligations, neither party may voluntarily terminate this Agreement unless each Lender associated with any outstanding Debt Obligation also consents in writing to such termination.

4. If an Event of Nonappropriation shall occur and be continuing, the CRRMA may terminate its obligations under this Agreement upon 30 days prior written notice to the City as long as there are no Debt Obligations outstanding.

C. Termination for Cause.

1. If any Event of Default by the City shall occur and be continuing and as long as there are no Debt Obligations outstanding, the CRRMA may, by 30 days written notice to the City, terminate its performance under this Agreement and/or pursue any other remedies permitted by law or equity. In the event there are any Debt Obligations outstanding, the CRRMA shall not terminate this Agreement and shall otherwise take commercially reasonable steps to enforce its rights hereunder and the transfer of the Tax Increment to make payments on such outstanding Debt Obligations in accordance with the terms hereof, but otherwise, the CRRMA may suspend its other obligations under the Agreement.

2. If any Event of Default by the CRRMA shall occur and be continuing and as long as there are no Debt Obligations outstanding, the City may, by 30 days prior written notice to the CRRMA, terminate its performance under this Agreement and/or pursue any other remedies permitted by law or equity. In the event there are any Debt Obligations outstanding, the City shall not terminate this Agreement and shall otherwise take commercially reasonable steps to enforce its rights hereunder and the transfer of the Tax Increment to make payments on such outstanding Debt Obligations in accordance with the terms hereof, but otherwise, the City may suspend its other obligations under the Agreement.

3. Notwithstanding anything in this Article XII to the contrary but subject to Article XIV, no purported 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 as long as any Debt Obligations remain outstanding.

4. Notwithstanding anything herein to the contrary, no purported termination of this Agreement will affect the obligations of the City to collect and transfer the Tax Increment to the CRRMA as long as any Debt Obligations remain outstanding.

D. Remedies. If any Event of Default shall occur and be continuing, the non-defaulting party may exercise any one or more of the following remedies:

1. by suit, action or proceeding at law or in equity (including a writ of mandamus), enforce all rights of the non-defaulting party, and require the defaulting party to carry out its obligations under this Agreement and any other agreements with or for the benefit of the Lender associated with any outstanding Debt Obligations, and to perform its duties under the TRZ Act or under such agreements; or

2. by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the non-defaulting party; or

3. take all actions permitted under this Agreement, or
4. take any other action permitted by law or equity.

E. 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 each Lender under any outstanding Debt Obligation and the City continues to appropriate funds for any 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.

F. No Dissolution of Zone. Prior to the issuance of any Debt 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 Debt Obligations which the CRRMA is authorized to issue pursuant to Article II hereof. As long as any Debt Obligations are outstanding, the City shall not dissolve the Zone unless the CRRMA and the Lender under any outstanding Debt Obligations consents in writing to such dissolution. In the event a change in State law requires the dissolution of the Zone, the City shall be obligated to make arrangements to provide for the payment in full of all outstanding Debt Obligations in accordance with the terms of the applicable Debt Governance Documents or as otherwise approved by each Lender associated with any outstanding Debt Obligations.

XIII. AMENDMENT OR MODIFICATIONS

Prior to the issuance of any Debt 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 Debt Obligations, the consent of each Lender associated with any outstanding Debt Obligation shall also be required for such amendment or modification. The foregoing notwithstanding and subsequent to the issuance of any Debt 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.

XIV. 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 each Lender associated with any outstanding Debt 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. No 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 Debt Obligations have been issued, to each Lender associated with any outstanding Debt Obligation and such termination will not be a default by the City under this Agreement. Notwithstanding anything herein to the contrary, such an Event of Nonappropriation in and of itself will not cause a termination of this Agreement as long as any Debt Obligations remain outstanding. No termination of any obligation to make TRZ Contract Payments because of an Event of Nonappropriation will affect the obligations of the City to collect and transfer the Tax Increment to the CRRMA in accordance with the terms of this Agreement.

**XV.
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.

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EXECUTED this ____ day of _____, 2024.

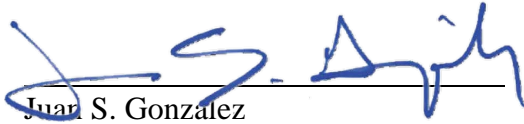
CITY OF EL PASO, TEXAS

Oscar Leoser
Mayor

ATTEST:

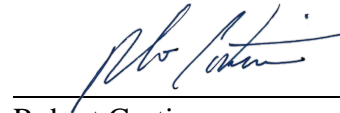
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Robert Cortinas
Chief Financial Officer

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

Joyce A. Wilson
Chair

ATTEST:

Monica L. Perez
Board Secretary