



HORIZON CITY

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**AGENDA
PUBLIC MEETING
SPECIAL CITY COUNCIL MEETING
THE TOWN OF HORIZON CITY, TEXAS
Tuesday, August 29, 2023, 6:00 PM**

Notice is hereby given that a Special City Council Meeting of the Town of Horizon City, Texas will be held on **Tuesday, August 29, 2023 at 6:00 PM** at City Council Chambers Room, 15001 Darrington Road, Horizon City, TX 79928, at which time the following will be discussed and considered:

- 1. Call to order; Pledge of Allegiance; Establishment of Quorum**
- 2. Open Forum:**

CONSENT AGENDA

All matters listed under the CONSENT AGENDA are considered routine and will be enacted in one motion. There will be no separate discussion of these items unless a member(s) of the City Council requests one or more items be removed from the CONSENT AGENDA to the REGULAR AGENDA for separate discussion and action prior to the City Council's vote to adopt the CONSENT AGENDA.

- 3. Approval of Minutes from:** **3**
Mayor/City Clerk
8/15/23 Special City Council Meeting.

- 4. Request to Excuse Absent Council Members:**

- 5. Approval of Consent Agenda Items:**

REGULAR AGENDA

- 6. Discussion and Action:** **6**
Mayor/Chief Vargas
Regarding compensation increases for the Horizon City Public Safety Dispatch Department in FY 2023-2024 and directing the Finance Director to make any adjustments necessary to the proposed 2023-2024 budget to cover the increases.

- 7. PUBLIC HEARING:**

Mayor/Finance Director

Public Hearing on Adoption of the Fiscal Year 2023/2024 Budget: For the purpose of allowing the public to question and comment on the proposed Fiscal Year 2023/2024 Budget. Copies of the proposed budget are available for your review at the City Clerk's Office at the Town of Horizon City, 14999 Darrington Road, Horizon City, Texas between the hours of 7:00 am to 6:00 pm Monday through Thursday and are available on the City's website.

- 8. Discussion and Action:** **11**
Mayor/CIP Manager
On a Resolution authorizing the Mayor to sign an Advance Funding Agreement with the Texas Department of Transportation for Rodman Street Shared Use Path (SUP).

- 9. Discussion and Action:** **35**
Mayor/CIP Manager

On a Resolution authorizing the Mayor to sign an Interlocal Agreement with the Camino Real Regional Mobility Authority for the design of the Rodman Street Shared Use Path (SUP).

- 10. Discussion and Action:** **47**

Mayor/CIP Manager

On a Resolution authorizing the Mayor or his designee to negotiate and sign a reimbursement agreement with Texas Gas Service for the relocation of certain Texas Gas Service facilities; the relocations are required for the N. Darrington Reconstruction project not to exceed \$60,000.00.

11. Discussion:

49

Mayor/CIP Manager

1st Reading of Ordinance No. 0264 Amendment No. 01, An Ordinance Amending Ordinance No. 0264 that designated Reinvestment Zone Number One Town of Horizon City for the purpose of modifying the preliminary project and financing plan to add Project Horizon Manor; specifying an effective date; and a severability clause.

12. Executive Session

The City Council of the Town of Horizon City reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices,) and 551.086 (Economic Development).

Adjournment:

Motion to Adjournment: _____ 2nd _____

Dated this Friday, 8/25/23

By: _____
Elvia Schuller, City Clerk

I, the undersigned authority, hereby certify that the above notice of the Special City Council Meeting of the Town of Horizon City, Texas is a correct copy of this notice, and that I posted this notice at least seventy-two (72) hours preceding the scheduled meeting at the City Hall Bulletin Boards of the Town of Horizon City, Texas on this Friday, 8/25/23 by 5:00 p.m.

Agenda Removed: _____ Time _____ By _____

In compliance with the Americans with Disabilities Act, the Town of Horizon City will provide for reasonable accommodations for persons attending meetings. Requests for auxiliary aids and services must be made 48 hours prior to this meeting by calling the City Clerk at (915) 852-1046.

**MINUTES
AGENDA
PUBLIC MEETING
SPECIAL CITY COUNCIL MEETING
THE TOWN OF HORIZON CITY, TEXAS
Tuesday, August 15, 2023, 6:00 PM**

Notice is hereby given that a Special City Council Meeting of the Town of Horizon City, Texas was held on **Tuesday, August 15, 2023 at 6:00 PM**, at City Council Chambers Room, 15001 Darrington Road, Horizon City, TX 79928, at which time the following was discussed and considered:

1. Call to order; Pledge of Allegiance; Establishment of Quorum

Meeting called to order at 6:00 pm. Council Member Ruben Mendoza was absent. Quorum Established.

2. Open Forum:

No one signed up to speak.

CONSENT AGENDA

All matters listed under the CONSENT AGENDA are considered routine and will be enacted in one motion. There will be no separate discussion of these items unless a member(s) of the City Council requests one or more items be removed from the CONSENT AGENDA to the REGULAR AGENDA for separate discussion and action prior to the City Council's vote to adopt the CONSENT AGENDA.

3. Approval of Minutes from:

Mayor/City Clerk
8/8/23 Regular City Council Meeting.

4. Request to Excuse Absent Council Members:

5. Approval of Consent Agenda Items:

A motion was made by Councilman Padilla and seconded by Councilman Quiroz to excuse Councilman Mendoza's absence and approve the remainder of the consent agenda. The CITY CLERK polled the Council: MILLER – Aye; QUIROZ – Aye; ORTEGA – Aye; RANDLEEL – Aye; URRUTIA – Aye; PADILLA – Aye; MENDOZA – Absent. Motion passed.

REGULAR AGENDA

6. Discussion and Action:

Mayor/Chief Vargas
On approval of the proposed El Paso County 911 District annual operating budget as presented.

Police Chief, Marco Vargas and El Paso County 911 District Director, Scott Calderwood spoke regarding this item.

A motion was made by Councilman Miller and seconded by Councilwoman Urrutia to approve the proposed El Paso County 911 District annual operating budget as presented. The CITY CLERK polled the Council: MILLER – Aye; QUIROZ – Aye; ORTEGA – Aye; RANDLEEL – Aye; URRUTIA – Aye; PADILLA – Aye; MENDOZA – Absent. Motion passed.

7. **Discussion:**

Mayor/Chief Vargas

1st Reading of Ordinance No. _____. An Ordinance amending Ordinance No. 0288 of the Town of Horizon City, adopting the Municipal Budget for the 2022-2023 Fiscal Year, to allow for the transfer of unexpended funds within the Police Department budget from accounts for dispatch and police department personal and other operational accounts to accounts to allow for the purchase of various items of equipment.

Police Chief, Marco Vargas spoke regarding this item.

8. **ANNOUNCEMENT:**

Mayor/Finance Director

The Public Hearing on the Proposed FY 2023 - 2024 Budget will be conducted on August 29, 2023 and the Public Hearing on the Proposed Tax Rate will be conducted on September 19, 2023 at 6:00 pm at 15001 Darrington Road. The adoption of the FY 2024 Budget and Tax Rate will be on September 19, 2023.

Finance Director, Lily Gaytan spoke regarding this item.

9. **Discussion and Action:**

Mayor/Finance Director

Announcement of the No-New Revenue Tax Rate and Voter-Approval Tax Rate for FY 2023-2024 and Council action on Proposed FY2023-24 Tax Rate for publication of notice.

Finance Director, Lily Gaytan spoke regarding this item.

A motion was made by Councilman Miller and seconded by Councilwoman Urrutia to accept the announcement of the No-New Revenue Tax Rate and Voter-Approval Tax Rate for FY 2023-2024 and approve the Proposed FY2023-24 Tax Rates as is for publication of notice. The CITY CLERK polled the Council: MILLER – Aye; QUIROZ – Aye; ORTEGA – Aye; RANDLEEL – Aye; URRUTIA – Aye; PADILLA – Aye; MENDOZA – Absent. Motion passed.

10. **Discussion:**

Mayor/Finance Director

1st Reading of Ordinance _____, An Ordinance of the City Council of the Town of Horizon City, Texas, approving the 2023 ad valorem tax rate and levy of assessed valuation of all taxable property within the corporate limits of the city; providing for penalties and interest; and providing for the following: findings of fact; severability; savings clause; publication and effective date.

Finance Director, Lily Gaytan spoke regarding this item.

11. **Discussion:**

Mayor/Finance Director

1st Reading of Ordinance No. _____, An Ordinance of the Town of Horizon City, Texas enacting the municipal budget for fiscal year 2023-2024; funding municipal purposes; authorizing expenditures; providing for repealer and severability clauses.

Finance Director, Lily Gaytan spoke regarding this item.

12. **Discussion and Action:**

Mayor/City Clerk

On a Resolution approving revisions to the travel policy for elected officials and employees to include revisions to the per diem rate and trip cancellations and to eliminate unnecessary language.

City Clerk, Elvia Schuller spoke regarding this item.

A motion was made by Councilman Miller and seconded by Councilman Quiroz to approve the revisions to the travel policy for elected officials and employees to include revisions to the per diem rate and trip cancellations and to eliminate unnecessary language. The CITY CLERK polled the Council: MILLER – Aye; QUIROZ – Aye; ORTEGA – Aye; RANDLEEL – Aye; URRUTIA – Aye; PADILLA – Aye; MENDOZA – Absent. Motion passed.

13. **Executive Session**

The City Council of the Town of Horizon City reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices,) and 551.086 (Economic Development).

ADJOURNMENT

A motion was made by Councilman Miller and seconded by Councilwoman Ortega to adjourn at 6:30 PM.

Approved this ____ day of _____, 20__.

Attest:

Elvia Schuller, City Clerk

Ruben Mendoza, Mayor

Interoffice Memorandum



TO: Honorable Mayor and City Council
FROM: Communications Manager Elva Ramos
RE: Pay Raises for Communications Specialists
DATE: 08/02/2023

Honorable Mayor and City Council Members,

The memorandum is to respectfully request your consideration to increase the Communications Specialists salary to 6.5 percent instead of the proposed 5%. We currently have 20 dispatchers authorized and have 5 vacancies.

In recent times, we have been having issues with retaining our employees due to the significant differences in salaries between other area agencies and companies. Comparatively speaking, agencies such as the El Paso County Sheriff's Office and the Socorro Police Department seem to pay their dispatchers more based on the functions they perform.

- El Paso County Sheriff's Office pays unlicensed telecommunicators \$19.90 an hour. After they become licensed through TCOLE, their pay is \$23.09. The El Paso Sheriff's Office Telecommunicators do not dispatch any fire departments.
- Socorro Police Department pays their employees \$16.75 to \$20.65 an hour. The pay is determined on the employee's years of service with the department and the prior years of experience. The Socorro Police Department Telecommunicators do not dispatch any fire departments.
- Horizon Police Department starting pay for their employees is \$16.71 an hour. The pay will remain the same after they become licensed through TCOLE. Prior experience is not taken into consideration. The Horizon Fire Department Telecommunicators dispatch for police and seven county fire departments.

Although the call volume is different between our agencies, the shear difference is that we handle all the county fire departments. And with that, it requires a different and much improved level of certifications and experience to manage those types of calls.

Below is a chart which shows the call volume per agency:

Agency	Call Volume	Staff
Horizon City Police Department	44,557 (PD 27,048/FD 17,509)	15
El Paso County Sheriff's Office	40,557	16
Socorro Police Department	30,357	9

Based on the high turnover rate, we are proposing a long-term plan to get the dispatchers to a minimum of \$21 an hour over the next 4 years. This includes a 6.5% annual raise which is 1.5% higher than the 5% that the city has historically given for the past 3 years. The below table gives us an idea of how these raises would be scheduled:

Fiscal Year	Amount per Hour
2023-2024	\$17.79
2024-2025	\$18.94
2025-2026	\$20.17
2026-2027	\$21.48

Apart from dispatching our Police Department, we dispatch Horizon Fire Department under El Paso County Emergency Services District 1 and West Valley, Clint, Socorro, Fabens, San Elizario and Montana Vista Fire Departments under El Paso County Emergency Services District 2. They both have individual service contracts with us for dispatch services which cover salaries and benefits for their full-time employees (FTE's) as formulated by calls for service annually.

A few months ago, we asked the Human Resources Manager to formulate a cost analysis showing a 6.5% increase for dispatchers. The information reflected showed a difference of \$6,621.13 for the police cost and \$7,648.56 for the ESD's cost. The cost per hour for a 6.5% raise would jump to \$17.80 an hour as opposed to \$17.55 at 5% for entry level.

In the preliminary budget workshops, we were informed by our Finance Director that she would be cutting 2 positions from our staffing table for Communications Specialists and would not be allowing the additional 1.5% increase for the dispatchers. This was due to the need to balance the 2023-2024 budget.

In addition, it was brought forth that the positions were cut since it appears we were able to operate under the allowed staffing. To clarify this, our Communications Manager and Shift Supervisors have had to step in to cover multiple shifts to ensure we are being fiscally responsible with our budget. Her efforts have led to her having to place her primary duties aside to assist the shifts all to keep costs down including staffing costs. In addition, we have had to change work schedules on a weekly basis to ensure we had coverage where it was needed.

Regarding the staffing, we annually review and have used the Erlang Formula for Call Centers. The formula indicates the need to have 21 dispatchers spread across 3 shifts with a relief factor to handle our call volume efficiently and effectively across police and fire department calls for service. Below is the screen shot of the formulations.

Erlang Calculator for Call Centre Staffing

Horizon City Police Department



Assumptions: 365 calls per Week - 90 % Answered in 20 seconds - Shrinkage 30 % - Max Occupancy 85 %. There are 37.5 working hours per week (=1 FTE)

Emergency Services District # 1 and #2 (County Fire Departments)



Assumptions: 577 calls per Week - 90 % Answered in 20 seconds - Shrinkage 30 % - Max Occupancy 85 %. There are 37.5 working hours per week (=1 FTE)

Calculations based on the call volume from August 2022 to August 2023

This number just reflects the incoming telephonic service calls and not additional radio traffic used to relay information. This information includes but is not limited to returns on checking subjects and items, requesting additional assistance or information, status checks, follow-ups and providing benchmarks.

With addressing the turnover rates, the individuals that resigned within the last year left our organization to seek better opportunities. More specifically better pay and working hours. Regarding the specific turnover numbers, the below chart illustrates what we have had between August 2022 and August 2023:

Hired	Terminated	Resigned
10	3	3

In addressing the vacancy issue, the below chart illustrates the number of applicants processed and what happened to their application between August 2022 and August 2023:

Total Applicants	Hired	Disqualified Interview	Disqualified Background	Disqualified Psychological
29	10	11	5	3

In configuring a cost analysis of the hiring process, the below shows approximate costs for each part of the process:

Interview Hrs.	Background	Psychological	Drug Screen	Total
Average 8 hrs at 3 employees	30-40 hrs per employee	1 per employee	1 per employee	
Average cost per hour \$31.38	Average cost per employee:\$1,103.20	13 employees	10 employees	
3 Interview Sessions	18 employees at 1 Per week	\$250.00	\$64.00	
\$2,259.36	\$19,857.60	\$3,250.00	\$640.00	\$20,438.48

Based on the figures provided and budgetary limitations, we would like to propose the following options to give the dispatchers a raise they deserve and to ensure we fall within the budget limitations at the same time:

Option 1	Keep the 20 positions and approve the cost difference of \$6,621.13 by reducing other line items in the Police and Communications budget.
Option 2	Reduce the number to 18 positions and approve the cost difference of \$6,621.13.
Option 3	Approve a transfer of surplus funds from the Police and Communications 2022-2023 budget.

Options and raise considerations depicted in this request are for this year only. We understand things can change, which may adversely affect our budget. For next year, consideration for continuation of pay raises would be based on the recommendation of the Finance Director and the request would be resubmitted for your consideration.

Thank you,



**TOWN OF HORIZON CITY
MEMORANDUM**

Date: August 25, 2023
To: Honorable Mayor and Members of City Council
From: Teresa Quezada, CIP Manager *Teresa Quezada 8/25/2023*
SUBJECT: **Discussion and Action: On a Resolution authorizing the Mayor to sign an Advance Funding Agreement (AFA) with the Texas Department of Transportation for Rodman Street Shared Use Path (SUP)**

The attached resolution authorizes the Mayor to sign an Advance Funding Agreement with the Texas Department of Transportation for the design of Rodman Street Shared Use Path.

The project is funded through Transportation Alternatives Set-Aside (Funds), and the application for the shared use path was selected through a competitive selection process at the MPO.

The Rodman Street multi-use path will connect the existing path on Horizon Blvd. to Veny Webb and, just across the street, to Corky Park. This will provide a safe route for pedestrians and cyclists to access both Corky Park and the Oz Glaze Center and will also provide connectivity to the planned transit stop on N. Darrington just south of the intersection with Horizon Blvd. near the Walmart. Providing a multi-use facility on Rodman also connects Horizon Blvd. to the neighborhood around Corky Park and to the future Transit Oriented Development the City is programming. The City's CIP team is currently developing the scope and estimate for the project. The required local match for this funding category is 20% or approximately. Once the project budget is developed, we will update the Council on the estimated amount.

This funding agreement covers the design phase of the project and requires a 20% match from the City which will be funded through the 2023 Certificates of Obligation issued on August 8, 2023.

Staff recommends approval.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS:

That the Mayor be authorized to sign the Advance Funding Agreement For A Transportation Alternatives Set-Aside (TASA) Program Project MPO-Selected Off-System (CSJ # 0924-06-697) by and between the Town of Horizon City, Texas, and the State of Texas, acting by and through the Texas Department of Transportation.

PASSED AND ADOPTED this ____ day of August 2023.

THE TOWN OF HORIZON CITY

By: _____
Andres Renteria, Mayor

ATTEST:

By: _____
Elvia Schuller, City Clerk

APPROVED AS TO FORM:

By: _____
Sylvia Borunda Firth
City Attorney

TxDOT:				Federal Highway Administration:	
CSJ #	0924-06-697			CFDA No.	20.205
District #	24- El Paso	AFA ID	Z00005366	CFDA Title	Highway Planning and Construction
Code Chart 64 #	19745				
Project Name	Roadman Street SUP-PE/CONS				<i>AFA Not Used For Research & Development</i>

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
MPO-Selected Off-System**

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project (“Agreement”) is made between the State of Texas (State), acting through the Texas Department of Transportation, and the Town of Horizon City (Local Government), acting through its duly authorized officials.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, Federal law, 23 USC §134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

WHEREAS, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

WHEREAS, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as **Roadman Street SUP-PE/CONS** (Project), and

TxDOT:				Federal Highway Administration:	
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WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 116292 (MO) dated August 25, 2022 awarding funding for TASA projects in the TASA Program Call of the El Paso MPO, including Project, and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated {enter date of resolution}, which is attached to and made a part of this Agreement as Attachment C, Resolution or Ordinance. A map showing the Project location appears in Attachment A, Project Location Map, which is attached to and made a part of this Agreement, and

NOW, THEREFORE, the State and the Local Government agree as follows:

AGREEMENT

1. Period of Agreement and Performance

- A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
- B. Period of Performance.
 - 1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
 - 2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

2. Scope of Work and Use of Project

- A. The scope of work for Project consists of Bicycle and Pedestrian Improvements. The Project includes the construction of a new shared-use path, which includes preparation of path width, concrete header curb, paving path, driveway construction at existing driveways, and signage along Rodman Street from FM 1281 (Horizon Blvd) to Veny Webb St as per Attachment A.
- B. Any project changes proposed must be submitted in writing by Local Government to State. Substantive changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

3. Project Sources and Uses of Funds

The total estimated development cost of the Project is shown in Attachment B, Project Budget Estimate and Source of Funds (Attachment B).

- A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one

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individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled “Local Government Project Procedures and Qualification for the Texas Department of Transportation” and retains qualification in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project. State in its discretion may deny reimbursement if Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The total estimated project cost as shown in Attachment B includes the Local Government’s estimated itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State’s In-Kind Match Reporting form.
- C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment B. Attachment B shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.
- E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.
- F. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government. If the Project was State-selected, the State may apply a portion of any excess program funds to cover all or a portion of any overrun based on criteria provided by 43 Tex. Admin. Code §11.411(d).

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- G. The budget in Attachment B will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment B. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government’s requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment B for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment B for State’s estimated construction oversight and construction cost.
- J. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment B and 100 percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State’s written notification.
- K. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the “Texas Department of Transportation”. The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.
- L. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.
- M. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State’s notification.
- N. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.
- O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor

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with access to any information the state auditor considers relevant to the investigation or audit.

- P. State will not pay interest on any funds provided by Local Government.
- Q. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.
- R. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.
- S. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

4. Termination of the Agreement

- A. This Agreement may be terminated by any of the following conditions:
 - 1. By mutual written consent and agreement of all parties;
 - 2. By any party with 90 days written notice; or
 - 3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
- B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- C. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government’s proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination;
- D. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State’s cost accounting system and with 2 CFR Part 200 recapture requirements.
- E. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:
 - 1. Local Government fails to satisfy any requirements of the program rules cited in 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418.
 - 2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.

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3. Local Government withdraws from participation in Project.
 4. State determines that federal funding may be lost due to Project not being implemented and completed.
 5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
 6. A construction contract has not been awarded or construction has not been initiated within three years after the date that the Commission or MPO selected the project or by a letting date determined by the state and agreed to by the Local Government.
 7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.
- F. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

5. Amendments

This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

7. Utilities

Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utilities or utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. At the State's discretion, State may reimburse Local Government for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State's request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

8. Environmental Assessment and Mitigation

Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

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- A. The **Local Government** is responsible for the identification and assessment of any environmental problems associated with the development of Project.
- B. Local Government is responsible for the cost of any environmental problem’s mitigation and remediation. These costs will not be reimbursed or credited towards Local Government’s financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
- C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, including any public hearing requirements that may be necessary when adding a bike lane.
- D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

9. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

- A. Architectural and engineering services for preliminary engineering will be provided by the **Local Government**. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services or if these services will be used as in-kind contributions; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements.
- B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior’s Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with State’s applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials’ (“AASHTO”) publications, “A Policy on Geometric Design of Highways and Streets” and “Guide for the Development of Bicycle Facilities,” as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT’s Bridge Design Manual and AASHTO’s Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.
- C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit

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the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.

- D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

11. Construction Responsibilities

- A. The **Local Government** shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. To ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.
- B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.
- C. All contract change order review and approval procedures must be approved by State prior to start of construction.
- D. If the Local Government is the responsible party, the State must review and approve change orders.
- E. Upon completion of Project, the party constructing Project will issue and sign a "Notification of Completion" acknowledging Project's construction completion.
- F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.
- G. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

12. Project Maintenance

- A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project

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for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project's original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.

- B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.
- C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.
- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

13. Right of Way and Real Property Acquisition

- A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
- B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR §24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.
- D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of

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Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, or (2) Local Government, if the real property is not to be made part of the State Highway System. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.

- E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.
- F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values. Local Government will not be reimbursed for right-of-way costs on state-selected projects.
- G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.
- H. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Local Government will not be reimbursed for right-of-way costs on state-selected projects.
- I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.
- J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment. For State-selected projects, this is outlined in 43 Tex. Admin. Code §11.417. The separate agreement

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must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

- K. Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.
- M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

14. Insurance

- A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.
- B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

15. Notices, Invoices, Payments, and Project Inquiries

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
Town of Horizon City ATTN: Planning Director 14999 Darrington Rd. Horizon City, TX 79928	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

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Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government:

Texas Department of Transportation
ATTN: Marty A. Boyd
13301 Gateway Blvd. West
El Paso, TX 79928-5410

All invoicing, payment, and project inquiries must include the following information:

County: El Paso County
Local Government: Town of Horizon City
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Highway or Roadway: City Street (Rodman Street)

16. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties

Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

19. Document and Information Exchange

Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State's document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

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20. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

21. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement’s subject matter.

22. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

23. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

24. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

25. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including

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employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

26. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).

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- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

27. Disadvantaged Business Enterprise Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise (“DBE”) Program requirements established in 49 CFR Part 26.
- B. Local Government shall adopt, in its totality, State’s federally approved DBE program.
- C. Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business

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Enterprise by Entity, and attachments found at web address:

http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

- E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).
- F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate."

28. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order

12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

29. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an

TxDOT:				Federal Highway Administration:	
CSJ #	0924-06-697			CFDA No.	20.205
District #	24- El Paso	AFA ID	Z00005366	CFDA Title	Highway Planning and Construction
Code Chart 64 #	19745				
Project Name	Roadman Street SUP-PE/CONS			<i>AFA Not Used For Research & Development</i>	

employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

30. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. Local Government agrees that it shall:
 - 1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://sam.gov/SAM/pages/public/index.jsf>
 - 2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
 - 3. Report the total compensation and names of its top five executives to State if:
 - a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

31. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.

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- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows: *We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____.*
- D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated under that party's signature.

THE STATE OF TEXAS	THE LOCAL GOVERNMENT
Signature	Signature
Kenneth Stewart	
Typed or Printed Name	Typed or Printed Name
Director of Contract Services	
Typed or Printed Title	Typed or Printed Title
Date	Date

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Code Chart 64 #	19745				
Project Name	Roadman Street SUP-PE/CONS				
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**ATTACHMENT A
PROJECT LOCATION MAP**



TxDOT:				Federal Highway Administration:	
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ATTACHMENT B
PROJECT ESTIMATE AND SOURCE OF FUNDS
 LG Performs PE Work or Hires Consultant / LG Lets Project for Construction

Work Performed by Local Government ("LG")							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation Includes percentage for TDC apportionment on projects where applicable		State Participation Includes authorized EDC amounts		Local Government Participation Includes authorized EDC reduction	
		%	Cost	%	Cost	%	Cost
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	0%	\$0
Preliminary Engineering	\$179,148.00	80%	\$143,318.40	0%	\$0	20%	\$35,829.60
Environmental Cost	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0
Construction Cost	\$						
Construction Engineering Cost	\$						
Eligible In-Kind Contribution Value	\$						
Total Construction Value (sum of construction cost and in-kind value)	\$0	0%	\$0	0%	\$0	0%	\$0
Work by LG Subtotal	\$179,148.00		\$143,318.40		\$0		\$35,829.60
Work Performed by the State (Local Participation paid up front by LG to TxDOT)							
Preliminary Engineering ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Environmental Cost ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way ³	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities ²	\$0	0%	\$0	0%	\$0	0%	\$0
Construction Cost ²	\$						
Eligible In-Kind Contribution Value	\$						
	\$0	0%	\$0	0%	\$0	0%	\$0

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Total Construction Value (sum of construction cost and in-kind value)							
Work by State Subtotal	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight							
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation Includes percentage for TDC apportionment on projects where applicable		State Participation Includes authorized EDC amount		Local Government (LG) Participation Includes authorized EDC reduction	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering ¹	\$32,455.00	80%	\$23,678.16	0%	\$0	20%	\$5,919.54
Environmental Cost ¹	\$25,964.00	80%	\$18,942.53	0%	\$0	20%	\$4,735.63
Right of Way ¹	\$6,491.00	80%	\$4,735.63	0%	\$0	20%	\$1,183.91
Utilities ¹	\$6,491.00	80%	\$4,735.63	0%	\$0	20%	\$1,183.91
Construction ²	\$0	0%	\$0	0%	\$0	0%	\$0
Direct State Costs Subtotal	\$71,401.00	0%	\$52,091.95	0%	\$0	0%	\$13,022.99
Indirect State Cost	\$32,463.08		\$0	100%	\$32,463.08		\$0
TOTAL PARTICIPATION	\$283,012.08		\$200,439.20		\$32,463.08		\$50,109.80
In-kind Contribution Credit Applied						0%	\$0
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION							\$0

- The estimated total participation by Local Government is \$50,109.80, plus 100% of overruns.
- Total estimated payment by Local Government to State is \$13,022.99.
- ¹Local Government's first payment of \$13,022.99 is due to State within 30 days from execution of this contract.
- ²Local Government's second payment of \$0 is due to State within 60 days prior to the Construction contract being advertised for bids.
- ³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.
- The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.

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- Transportation Development Credits (TDC) are being utilized in place of the Local Government's participation in the amount of {enter amount}.
- This is an estimate; the final amount of Local Government participation will be based on actual costs.
- Maximum federal TASA funds available for Project are \$200,439.20



**TOWN OF HORIZON CITY
MEMORANDUM**

Date: August 25, 2023

To: Honorable Mayor and Members of City Council

From: Teresa Quezada, CIP Manager *T. Quezada 8/25/23*

SUBJECT: **Discussion and Action: On a Resolution authorizing the Mayor to sign an Interlocal Agreement with the Camino Real Regional Mobility Authority for the design of the Rodman Street Shared Use Path (SUP)**

The attached resolution authorizes the Mayor to sign an interlocal agreement (ILA) with the Camino Real Regional Mobility Authority (CRRMA) for the design of Rodman Street Shared Use Path.

This is a companion item to the Advance Funding Agreement the Council is considering at the August 29, 2023, Council meeting. The ILA provides for the CRRMA and their team of consultants to design the Rodman Shared Use Path to TXDOT design standards and expedites the design process by reducing the administrative time for the City. The CRRMA's proposal is within the approved project budget.

Staff recommends approval.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS:

That the Mayor be authorized to sign the Interlocal Agreement between the Town of Horizon City and the Camino Real Regional Mobility Authority for Project Development for the Rodman Street Shared Use Project.

PASSED AND ADOPTED this _____ day of August 2023.

THE TOWN OF HORIZON CITY

By: _____
Andres Renteria, Mayor

ATTEST:

By: _____
Elvia Schuller, City Clerk

APPROVED AS TO FORM:

By: _____
Sylvia Borunda Firth
City Attorney

INTERLOCAL AGREEMENT

PROJECT DEVELOPMENT AGREEMENT FOR THE RODMAN STREET SHARED USE PATH PROJECT

THIS INTERLOCAL AGREEMENT (the Agreement) is made and entered into effective as of the ____ day of _____, 2023, by and between the TOWN OF HORIZON CITY (the Town) and the CAMINO REAL REGIONAL MOBILITY AUTHORITY (the Authority), (collectively, the Parties), for the purposes described herein.

WITNESSETH:

WHEREAS, the Town is a political subdivision of the State of Texas; and

WHEREAS, the Authority is a regional mobility authority created pursuant to the request of the City of El Paso and operating pursuant to Chapter 370 of the Texas Transportation Code (the RMA Act) and 43 TEX. ADMIN. CODE §§26.1 *et seq.* and is a body politic and corporate and political subdivision of the State; and

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, Section 370.033 of the RMA Act permits the Authority to enter into an agreement under which the Authority may acquire, plan, design, construct, maintain, repair, or operate a transportation project on behalf of another governmental entity if the transportation project is located in the Authority's area of jurisdiction or in a county adjacent to the Authority's area of jurisdiction; and

WHEREAS, the Town requests the Authority to develop the Rodman Street Shared Use Path Project (the Project), located in El Paso County which is within or adjacent to the Authority's area of jurisdiction; and

WHEREAS, the Town and Authority now desire to enter into this Agreement to allow for the Authority to complete the services requested by the Town for the Project; and

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

I. FINDINGS

A. Recitals. The recitals set forth above are incorporated herein for all purposes and are found by the Parties to be true and correct. It is further found and determined that the Parties have authorized and approved the Agreement by resolution or order adopted by their respective

governing bodies, and that this Agreement will be in full force and effect when approved by both Parties.

B. Overview of the Project. The Town and Authority have agreed to cooperatively develop the Project, due to the mutual benefit to each Party and the benefits to the region's transportation system. The Town has secured a funding source for the Project. The Authority, in coordination with the Town and in accordance with **EXHIBIT A**, will engage outside consultants and contractors for the design and construction of the Project, using funds provided by the Town. The Project responsibilities of each Party and the Project budget are more fully enumerated within **EXHIBITS B-C** of this Agreement.

II.

DUTIES AND RESPONSIBILITIES OF THE AUTHORITY

A. Project Services. Subject to the terms of this Agreement, the Authority agrees and is hereby authorized to use funding from the Town, or such other lawfully available funds designated from time to time, to provide all or a portion of the funding necessary for the completion of services identified in **EXHIBIT A**.

1. Timeline for Commencement and Completion of Work. Commencement of work on the Project shall begin when the Town Representative (as defined in Section IV below) issues a written Notice to Proceed to the Authority for the Project. No later than fifteen (15) days from Authority receipt of a Notice to Proceed, the Authority will initiate the process to commence work on the Project, as more specifically described in **EXHIBITS A, B, and C**. Project-related services, including any applicable phasing of such activities, will be completed in accordance with the schedule developed between the Town and the Authority.

2. Scope of Work. Specific elements of the work required for the Project and the responsible party for the performance of such work are set forth in **EXHIBIT B** to this Agreement. Such services will be provided by the appropriate party within the jointly developed schedule referenced in subparagraph II.A.1. above.

3. Project Budget. The initial budget for the Project is set forth in **EXHIBIT C** to this Agreement (the Project Budget). The Parties will work together to attempt to minimize the actual costs as reflected in the Project Budget, and in no event shall the cash disbursements by the Authority exceed such Project Budget, absent the written agreement of the Parties.

B. Authority and Town Cooperation. The Parties shall cooperate in the development of the Project such that the Project is most effectively and efficiently developed.

1. Inspections. The Town and its authorized representatives may observe or inspect all work done and materials furnished for the Project at reasonable times and places. If either Party believes such work is not being pursued as originally contemplated, the Parties' designated representatives shall meet to discuss appropriate actions to ensure that any defects or deviations in the Project are remedied.

2. Budget Overruns. In the event the costs of the Project funded in whole or in part

from Town funds exceed, or due to a change in circumstances during development of such Project are expected to exceed, the amount specified in the Project Budget and other lawfully available and designated funds, the Parties, through their respective designated representatives, will work together to identify the additional funding necessary for the Project. In the event additional funds cannot be identified to address such increased costs, the Parties shall work together to amend the scope of the Project to fit within the available funds or to otherwise address the Project funding shortfall.

3. Change Order. When applicable, Change Order shall mean a written order to the Authority's contractor executed by the Authority after execution of the original construction contract between the Authority and that contractor, directing a change in the work to be performed on a Project, and may include a change in the contract price or the time for the contractor's performance or any combination thereof. A Change Order requested by the Authority or its contractor, which would result in an increase in the Project Budget, must be approved by the Town in writing prior to creating an enforceable commitment of Town funds or other lawfully available and designated funds. A proposed Change Order requested by the Authority or its contractor shall be provided to the Town in writing and include detailed justification for the requested change(s). The Authority may approve a Change Order without the approval of the Town if the Authority agrees to pay the increased cost of the Project from its own funding source.

4. Final Acceptance. When applicable, the Authority shall notify the Town in writing upon Final Acceptance of the Project or a portion of the Project. Upon Final Acceptance of the Project, or a portion of the Project, the Authority will assign to the Town, or other responsible entity, all contractor warranties, guarantees, and bonds which it possesses with respect to such work and which extend beyond the date of such Final Acceptance. Unless otherwise agreed by the Authority, the Authority shall have no further obligation with respect to such work after Final Acceptance.

5. Authority Performance Measures. Some of the services being provided pursuant to this Agreement are an extension of the services being provided to the Authority under agreements with contractors or under consulting agreements with third-party professionals. As such, the Authority shall ensure, through its agreements with such contractors and third-party professionals, that the same performance measures are established and maintained for the performance of the services delivered on the Project pursuant to this Agreement as are applicable to work performed by such contractors and third parties on other Authority Projects. The Authority shall enforce such measures and standards on the Town's and the Authority's behalf, and the Authority shall not agree to modify performance measures, as they may relate to the services contemplated herein, without the prior written consent of the Town.

C. Reports to the Town. The Authority shall, at such times and in such form as the Town may reasonably request, furnish periodic information concerning the status of the Project and the performance of the Authority's obligations under this Agreement. To the extent requested by the Town, the Authority shall make an annual report to the Town's Council on the Project. Such annual report shall include information on the current status, including financial details, of the Project and the state of the Authority as a public entity in general.

D. Accounting. The Authority shall use diligence to ensure that each distribution of Project funds is for proper and documented expenditures. Complete books and records shall be maintained by the Authority of disbursements for payments required in this Agreement. All such books and records shall be deemed complete if kept in accordance with the Governmental Accounting Standards Board's principles and in accordance with the provisions of the RMA Act. Such books and records shall be available for examination by the duly authorized officers or agents of the Town during normal business hours upon request made not less than five (5) business days prior to the date of such examination. In addition, the Authority shall coordinate with the Town's Auditor's Office to provide information and documentation necessary for the Town to complete its annual books, records, and reports for each fiscal year, during which: (1) Project funds are/were distributed for the Project; (2) Project warranties are/were in effect; and/or (3) Project claims are/were outstanding.

E. Limitations on Project Development. Notwithstanding anything herein to the contrary, the Authority shall not be obligated to pursue or complete development of the Project if the funds available from the Town together with other lawfully available and designated funds are insufficient to pay all costs associated with the Project and the Town fails to provide additional funding to cover the amount of any such deficiency.

III. DUTIES AND OBLIGATIONS OF THE TOWN

A. Project Responsibilities of the Town. The Town shall be responsible for the costs of those responsibilities as enumerated within **EXHIBIT B** to this Agreement, with such payments to be made in accordance with the terms established within **EXHIBIT C**. Once those responsibilities or deliverables have been completed, the Town shall bear no additional costs for completion of the Project, unless specifically included in the Project Budget or in a written amendment of this Agreement approved by the Town.

B. Financial Obligations of the Town. Authority financial obligations created hereunder shall be limited solely to Town funds transferred from time to time by the Town to the Authority as required by this Agreement. Except for delivery of the funds enumerated herein, the Town shall have no financial obligation to make any payment, in whole or in part, on behalf of the Authority, unless specifically provided in accordance with the terms of this Agreement, its exhibits or amendments.

C. Disclosure of Information. The Town covenants and agrees that it shall cooperate with the Authority to ensure the timely completion of the Project within specified and agreed upon budgets and shall promptly provide the Authority with such information or support as may be necessary for the Authority to satisfy its obligations under this Agreement.

IV. PARTY REPRESENTATIVES AND LEGAL NOTICES

A. Party Representatives. The designated representatives authorized to act on behalf of each party hereto, and the addresses to which notices due hereunder should be directed, are as follows, unless and until either Party is otherwise notified in writing by the other:

Town:

Planning Director
14999 Darrington Road
Horizon City, Texas 79928

Authority:

Executive Director
801 Texas Avenue
El Paso, Texas 79901.

B. Limitations on Town Representative. Notwithstanding anything contained herein to the contrary, approval of the Project Budget, changes to the funding source(s), change orders that increase the Project Budget, and all amendments to this Agreement shall require the action of the Town's Council.

C. Legal Notices. Any and all notices and communications under this Agreement shall be in writing and mailed by first-class mail, or hand delivered, addressed to the following designated officials:

Town:

Planning Director
14999 Darrington Road
Horizon City, TX 79928

Authority:

Executive Director
801 Texas Avenue
El Paso, Texas 79901

**V.
TERM AND TERMINATION**

Term and Termination. Subject to the following, this Agreement shall be effective as of the date first written above and shall continue in full force and effect until the completion of the services to be provided. Notwithstanding the foregoing, and without limitation on any other remedy identified in the Agreement or available at law or in equity:

A. either Party may terminate this Agreement in the event of a material breach of its terms, which may include, but is not limited to, failure to make timely payments of amounts owed and failure of services to be provided in accordance with this Agreement, provided that the party seeking to terminate the Agreement has provided written notice to the other of the alleged default and the default has not been cured within thirty (30) days of receipt of such notice; and

B. the Parties may mutually agree to terminate this Agreement.

**VI.
GENERAL AND MISCELLANEOUS**

A. Waiver. Neither this Agreement nor any of the terms hereof may be waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of

the waiver or modification shall be sought. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy.

B. Other Services. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.

C. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

D. Amendments and Modifications. This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

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

F. Successors and Assigns. This Agreement shall bind and benefit the respective Parties and their legal successors, and shall not be assignable, in whole or in part, by any Party hereto without first obtaining the written consent of the other Party.

G. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

H. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

TOWN OF HORIZON CITY, TEXAS

Andres Renteria, Mayor

ATTEST:

Elvia Schuller, City Clerk

**CAMINO REAL
REGIONAL MOBILITY AUTHORITY**

Joyce A. Wilson, Chair

ATTEST:

Dorothy M. (Sissy) Byrd
Treasurer / Secretary

EXHIBIT “A”

RODMAN STREET SHARED USE PATH PROJECT PROJECT DESCRIPTION

The Authority will provide services associated with the design and letting of the Project – a proposed 9-foot shared use path on Rodman Street. The Project includes preparation of the required design plans, including path width, concrete header curb, paving of the path, driveway construction at existing driveways, signage, solar power lighting and minimal landscaping. Rodman Street is a two-lane street on the eastern boundary of Horizon City's planned Transit Oriented Development. The goal for this Project is to provide a multi-use path along the western right-of-way line from Horizon Blvd. to Veny Webb Street to connect the existing multi-use path along Horizon Blvd. to the facilities on Veny Webb (Oz Glaze Senior Center and Desmond Corcoran (Corky) Park). Providing a shared-use path will allow for different transportation modalities to safely access these destinations from the existing path along Horizon Blvd.



[END OF EXHIBIT]

EXHIBIT “B”

RODMAN STREET SHARED USE PATH PROJECT PROJECT RESPONSIBILITIES

- 1. PLANNING: Town (complete)**
- 2. DESIGN: Authority**
- 3. ENVIRONMENTAL PERMITTING: Authority**
- 4. RIGHT-OF-WAY ACQUISITION: N/A**
- 5. CONSTRUCTION LETTING: TBD**
- 6. CONSTRUCTION: TBD**
- 7. FINANCIAL OBLIGATIONS: Town**
- 8. REPORTING: Authority, if requested**
- 9. PERFORMANCE STANDARDS: Authority**
- 10. MARKETING AND PUBLIC OUTREACH: None**
- 11. UTILITY RELOCATION: N/A**
- 12. OTHERS: N/A**

[END OF EXHIBIT]

EXHIBIT “C”

**RODMAN STREET SHARED USE PATH PROJECT
PROJECT BUDGET**

DESCRIPTION	TOTAL ESTIMATED COST	AUTHORITY PAYS WITH TOWN FUNDS	AUTHORITY PAYS WITH OTHER FUNDS
ROW	\$ 0.00	\$ 0.00	\$ 0.00
UTILITY RELOCATION	\$ 0.00	\$ 0.00	\$ 0.00
PERMITS & SERVICES	\$ 0.00	\$ 0.00	\$ 0.00
ENGINEERING	\$ 265,897.91	\$ 265,897.91	\$ 0.00
CONSTRUCTION	\$ 0.00	\$ 0.00	\$ 0.00
MISCELLANEOUS	\$ 0.00	\$ 0.00	\$ 0.00
TOTAL	\$ 265,897.91	\$ 265,897.91	\$ 0.00

NOTES:

1. The table above identifies anticipated uses by the Authority of available funds by category. However, the Authority is not limited in its use of funds by such categories and is expressly authorized to utilize funds from any category in the development of the Project, as needed; provided the Authority coordinates all such uses with the Town.
2. The Authority shall submit monthly invoices to the Town for design and design oversight services rendered by the Authority and its consultants, which shall be paid by the Town within thirty (30) days of receipt. Submittals shall also include status reports in a form and style agreed upon by the Town.
3. The funding category identified as “Engineering” includes those activities customarily provided in the completion of a set of design plans and expressly include design services, design oversight services, and administrative expenses.

[END OF EXHIBIT]



**TOWN OF HORIZON CITY
MEMORANDUM**

Date: August 25, 2023

To: Honorable Mayor and Members of City Council

From: Teresa Quezada, CIP Manager

SUBJECT: Discussion and Action: On a Resolution authorizing the Mayor or his designee to negotiate and sign a reimbursement agreement with Texas Gas Service for the relocation of certain Texas Gas Service facilities; the relocations are required for the N. Darrington reconstruction project not to exceed \$60,000.

Teresa Quezada 8/25/2023

The attached resolution authorizes the Mayor or his designee to negotiate and sign a reimbursement agreement with Texas Gas Service for relocations required for the N. Darrington Reconstruction project.

Since the N. Darrington Reconstruction project will be managed by TXDOT, the TXDOT design team recommended the City use the *Standard Utility Agreement* used by TXDOT. Texas Gas Services representatives have indicated their legal and technical staffs are familiar with the format of the *Standard Utility Agreement*. All references to the state or TXDOT will be removed from the document to reflect that the agreement is between Horizon City and Texas Gas Service.

Texas Gas Service has indicated that the relocations costs and the required City reimbursement total approximately \$60,000, thus the authorization sets that amount as the limit.

Staff recommends approval.

RESOLUTION

WHEREAS, as part of the N. Darrington Reconstruction Project it is necessary to relocate some utility infrastructure owned and operated by Texas Gas Services;

WHEREAS, pursuant to the Advanced Funding Agreement the Town of Horizon City signed with the Texas Department of transportation, the City is responsible for bearing the costs of such utility relocations;

WHEREAS, Texas Gas Service is willing to undertake the necessary relocation and be reimbursed by the Town of Horizon City;

WHEREAS, the City desires to enter into a reimbursement agreement with Teas Gas Services so the relocation work can be started without delay.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS:

That the Mayor, or his designee, be authorized to negotiate and sign a Reimbursement Agreement with Texas Gas Services for an amount not to exceed \$60,000.00 to reimburse Texas Gas Services for the cost of relocating its facilities as needed for the N. Darrington Reconstruction Project.

PASSED AND ADOPTED this ____ day of August 2023.

THE TOWN OF HORIZON CITY

By: _____
Andres Renteria, Mayor

ATTEST:

By: _____
Elvia Schuller, City Clerk

APPROVED AS TO FORM:

By: _____
Sylvia Borunda Firth
City Attorney



**TOWN OF HORIZON CITY
MEMORANDUM**

Date: August 25, 2023
To: Honorable Mayor and Members of City Council
From: Teresa Quezada, CIP Manager
SUBJECT: **First Reading of Ordinance 0264 Amendment No. 1 – modifying the TIRZ #1 preliminary project and financing plan to add Project Horizon Manor**

Teresa Quezada 8/25/2023

This is the first reading of Ordinance 0264 Amendment No. 1 which modifies the TIRZ #1 preliminary project and financing plan to add Project Horizon Manor.

State law requires that any modifications to the TIRZ project and financing plan must be adopted by ordinance. The project added to the preliminary project and financing plan is the redevelopment of the former FAA building on 1560 Pawling. The Horizon Economic Development Corporation has been working with the developer on this project and will provide greater detail regarding the proposed redevelopment of the property.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 0264 THAT DESIGNATED REINVESTMENT ZONE NUMBER ONE TOWN OF HORIZON CITY FOR THE PURPOSE OF MODIFYING THE PRELIMINARY PROJECT AND FINANCING PLAN TO ADD PROJECT HORIZON MANOR; SPECIFYING AN EFFECTIVE DATE; AND A SEVERABILITY CLAUSE

WHEREAS, the Town of Horizon City adopted Ordinance No. 0264, on December 8, 2020, for the purpose of designating Tax Increment Reinvestment Zone Number One, Town of Horizon City ("Zone") in accordance with the Tax Increment Financing Act ("Act");

WHEREAS, a Preliminary Project and Financing Plan ("Preliminary Plan") was approved by the City Council of the Town of Horizon City at the time of the adoption of Ordinance No. 0264, pursuant to Section 311.011(d) of the Act;

WHEREAS, the Board of Directors of the Zone ("Board) approved the Preliminary Plan on _____;

WHEREAS, the Board continues to support the City in development activities for the Zone and actively participates in planning and identifying potential Zone projects;

WHEREAS, pursuant to Section 311.011(e) of the Act, the Board may adopt amendments to the Preliminary Plan consistent with the requirements and limitations of the Act, which become effective when the City Council of the Town of Horizon City adopts an ordinance approving the amendment:

WHEREAS, the Board has adopted an amendment to the Preliminary Plan on December 13, 2022, to add Project Horizon Manor;

WHEREAS, the City desires to amend the Preliminary Plan as approved by the Board, in support of community revitalization and economic development within the Zone; and

WHEREAS, this Ordinance was passed at a meeting open to the public, and public notice of the time, place, and subject of said meeting was provided as required by Chapter 551, Texas Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY AS FOLLOWS:

1. **Amendment to Add Project:** That the Preliminary Plan (hereafter known as the Project & Financing Plan) is hereby amended to add **Project Horizon Manor** to support the redevelopment of the property located within the boundaries of the Zone and municipally known and numbered as 1560 Pawling, Horizon City, Texas and more fully described on **Attachment “A”** attached hereto and fully incorporated herein.
2. **Amendment is a Statement of Intent:** This amendment does not constitute a contractual or financial obligation to the City, the Economic Development Corporation, or the Board. It indicates the intent to continue the project development and negotiation process. By separate formal actions, the Board and the City Council will consider execution of additional documentation with the project developer to govern the contractual and financial obligations of the parties related to construction of the public infrastructure improvements, reimbursement of eligible project costs, and the use of City, Economic Development Corporation and TIRZ incentives.
3. **Amendment to Financing Plan:** The Project and Financing Plan is hereby amended to reflect the additional funding allocated to Project Horizon Manor as specified on Attachment “A”.
4. **Conformity With Comprehensive Plan and Ordinance No. 0264:** The amendment to add Project Horizon Manor is in conformity with Ordinance No. 0264 _ and is hereby determined to be feasible and in conformity with the Town of Horizon City Comprehensive Plan.
5. **Recitals.** The statements set forth in the recitals of this Ordinance are declared to be true and correct and are incorporated as part of this Ordinance.
6. **Severability.** If any provision of this Ordinance, or the application thereof shall be held to be invalid or unconstitutional, the remainder of this Ordinance shall nevertheless be valid.
7. **Effective Date:** This Ordinance shall be fully effective on the date it is finally passed and approved by the City Council of the Town of Horizon City, Texas.

PASSED, APPROVED, AND ADOPTED, the _____ day of September 2023.

TOWN OF HORIZON CITY

By: _____
Andres Renteria, Mayor

ATTEST:

By: _____
Elvia Schuller, City Clerk

APPROVED AS TO FORM:

By: _____
Sylvia Borunda Firth
City Attorney

ATTACHMENT “A”
PROJECT HORIZON MANOR

Developer: MIBEC INVESTMENTS, LLC

Redevelopment Site: 1560 Pawling Horizon City, Texas

Project: Demolition of existing building and development of office and warehouse buildings to include:

- Develop two to four office condos.
- One office warehouse building a minimum of 20,000 sq. ft.

Additional developer obligations:

- Developer agrees to invest approximately \$3.1 million to develop the property.
- Developer agrees to purchase the property at \$3 per square foot, for a total of approximately \$296,115.00.
- Horizon City Economic Development Corporation shall have the option to purchase one of the office condominiums (Minimum 2,500 sq. ft) at a price to be negotiated prior to the execution of incentive agreements.
- Developer will provide site plan for the approval of the City that addresses the following:
 - Façade and architectural design
 - Street trees and landscaping

Incentives offered to developer:

- Reimbursement of demolition and site preparation expenses not to exceed the sum of \$ 30,888.00.
- The Town of Horizon City Economic Development Corporation will provide approximately \$116,000 in incentives for façade, architectural design, and landscaping.