

**INTERLOCAL AGREEMENT  
BETWEEN THE  
EI PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 1  
AND THE TOWN OF HORIZON CITY**

**STATE OF TEXAS** §  
§  
**COUNTY OF EL PASO** §

**This Interlocal Agreement (“Agreement”)** is made and entered into by and between **EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 1 (“District”)** and the **TOWN OF HORIZON CITY, TEXAS** a municipal corporation and political subdivision of the State of Texas (**“City”**), both Parties acting herein by and through their duly authorized representatives, and made effective on the last date signed and dated below;

**WHEREAS**, this Agreement is entered into pursuant to the Texas Government Code Section 791.001 et seq., Interlocal Cooperation Act;

**WHEREAS**, the City and the District are political subdivisions fully authorized by Chapter 791 of the Texas Government Code to make and enter into this Agreement;

**WHEREAS**, the City has currently undertaken a public works project known as the Pawling, Oxbow and Breaux Streets Improvement Project (**“Project”**);

**WHEREAS**, the District owns property immediately adjacent to the Project and has requested the City construct a driveway to serve the property in conjunction with the Project;

**WHEREAS**, the District is willing to fully reimburse the City for the expenses incurred in connection with the design and construction of the driveway; and

**WHEREAS**, the respective governing body of each party finds that: the performance of this Agreement is in the common interest of both parties; the subject of this Agreement is necessary for the benefit of the public; and that each party has the legal authority to perform and to provide the governmental function which is the subject matter of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and conditions contained in this Agreement, the District and the City, acting by and through their respective governing bodies have determined that it is in the public interest to enter into the following Agreement,

incorporate the foregoing recitals into this agreement as findings of fact as if expressly set forth herein, and take all action necessary to authorize and enter into same, as provided by law; and agree as follows:

## **ARTICLE I Definitions**

Throughout this Agreement, the following terms and expressions shall have the meanings set forth below, unless the context clearly indicates otherwise:

**“Authorized Representative”**: means an individual designated by a Party to this Agreement who shall be authorized to make decisions and bind the Party on matters relating to this Agreement, and to perform such other functions as described herein.

The initial designations of the Authorized Representatives are \_\_\_\_\_ with respect to the District and \_\_\_\_\_ with respect to the City. Such designations may be changed by providing written notice to the other Party.

**“Final Acceptance”** shall mean the achievement of final completion of construction of the Project to the satisfaction of the City after consultation with the District, and the occurrence of other events and satisfaction of all the other conditions as set forth in the construction contract for the Project, including final payment to the Project contractor.

**“District Infrastructure”** shall mean the driveway described on Exhibit “A” attached hereto and incorporated herein by reference.

## **ARTICLE II City’s Obligations**

### **A. Project Development and Construction**

1. The Project will be planned, procured, designed, and constructed by the City through the procurement method chosen by the City in accordance with applicable law. Subject to the provisions of this Agreement, the City shall issue the necessary procurement documents, manage the procurement process, and manage the design and construction of the Project.

2. As part of the design, the City will incorporate the design of the District Infrastructure and will cause it to be constructed as part of the Project.

**B. Construction and Post Construction Records and Information.** City will provide to the District:

- a. Copies of any future change orders related to the Project that relate to the District Infrastructure.
- b. Upon satisfactory completion of construction and any applicable warranty or construction performance period, the City will furnish to the District a final construction summary and a copy of the record drawings of the District Infrastructure for the District's records.
- c. The transfer of any such contractor's warranties, guarantees, and bonds, to the extent such are transferable, that relate to the District's Infrastructure.

### **ARTICLE III District Obligations**

**A. Coordination and Consultation.** The District will provide assistance to the City as follows:

- a. The District will meet with the City and its contractor regarding the process of constructing the District's Infrastructure to avoid any delays or additional cost to the Project caused by lack of coordination.
- b. The District shall meet with the City's contractor at least \_\_\_\_ business days prior to the start of the construction at the site owned by the District, so as to make final plans for the coordination of the work and the condition as to which the site will be left in upon completion of the District's work.

**B. Access to District Property.** The District shall allow the City's contractor to access the construction site for the installation of the District's Infrastructure in a timely manner and will not delay the progress of the Project.

**ARTICLE IV**  
**Bond and Guarantee; Insurance**

- A.** All construction contracts affecting the Project and the District's Infrastructure shall include a payment and performance bond acceptable to and in favor of and benefitting the City, for the full amount of the contract and a warranty by the contractor executed in favor of and benefitting the City and the District, for a period of one year from the date of acceptance of the Roadway Improvements.
- B.** The City shall require the construction contractor to provide workers compensation insurance as required by the laws of the State of Texas. The City shall also require that the contractor procure and maintain comprehensive general liability insurance and auto liability insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of the construction of the Project in the standard amounts required by the City. The City and the District will be included as additional insured on all such insurance coverages.

**ARTICLE V**  
**Liability for losses**

- A.** The City agrees that it is solely responsible for all losses, costs, expenses, penalties, claims, and liabilities due to activities of the City and its agents, employees, officers, or contractors performed under this Agreement, and which result from an error, omission, or negligent act of the City or any agent, employee, official, or contractor of the City. Notwithstanding anything in this Agreement to the contrary, these provisions shall survive any termination of this Agreement.
- B.** The District agrees that it is solely responsible for all losses, costs, expenses, penalties, claims, and liabilities due to activities of the District and its agents, employees, officers, or contractors performed under this Agreement, and which result from an error, omission, or negligent act of the District or any agent, employee, official, or contractor of the District. Notwithstanding anything in this Agreement to the contrary, these provisions shall survive any termination of this Agreement.
- C.** The City will require the contractor constructing the Project to protect, defend, indemnify, and hold harmless the District from liability in the same manner as the

contractor will so protect, defend, indemnify, and hold harmless the City under the construction contract.

## **ARTICLE VI**

### **Financial Obligations**

- A. The City will provide the funding of the Project to include the District Infrastructure and the District will provide funding to the City in such an amount that reimburses the City for the construction costs relating to the District Infrastructure.
- B. Within 30 days after both Parties have executed this Agreement, the District will deposit with the City's Finance Director, an initial amount of \$4,758.50, which shall be used for the District Infrastructure and credited to the amount of total costs that the District will owe to the City for the District Infrastructure.
- C. The City will account for all actual costs associated with the Project using generally accepted state and federal accounting procedures. Upon final completion of the Project, the City shall determine the actual cost of construction of the portions of the project attributable to the District Infrastructure, which shall be the actual cost of construction, for which the District is obligated to repay to the City ("District Costs").
- D. Within 60 days after the Roadway Improvements are complete, the City shall render and send to the District, a final written accounting of any and all costs to be paid or borne by the District under this Agreement, taking into account any amount the District has previously paid as provided herein and subject to adjustment after resolution of any pending claims or contingent liabilities arising from the roadway Improvements.
- E. Payments made by the District that are not timely received by the City will bear interest at the maximum rate allowed by law.

## **ARTICLE VII**

### **Term, Default and Termination**

- 1. **Term.** The term of this Agreement shall begin on the effective date hereof and shall end upon full payment by the District of the District's Costs.

**2. Termination.**

- a) This Agreement may only be terminated by 30 days written notice of termination by the City to the District or upon mutual agreement and consent of the City and the District.
- b) Upon repayment in full by the District of the District's Costs, this Agreement shall automatically terminate except with respect to any obligation of a Party related to any losses, costs, expenses, penalties, claims, and liabilities due to the activities of a Party, or any agent, employee, official, or contractor of a Party, which obligations shall survive such termination.

**3. District Default.** The District shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a District Default”):

- a) The District fails to reimburse the City for any amount owing and payable within 30 days after the date such payment is due; or
- b) The District fails to observe or perform any other covenant, agreement, term, or condition required to be observed or performed by the District under this Agreement.

**4. District Cure Periods.** For the purpose of the City's exercise of remedies, the District shall have a period of thirty (30) days after the City delivers to the District written notice of the District Default.

**5. City Remedies for District Defaults.** The District agrees that in the event of default by the District under this Agreement, the City may, by all legal and equitable means, require the District and any appropriate official of the District (acting solely in his or her official capacity) to remedy any default under, and carry out the provisions of, this Agreement, including specifically the use and filing of mandamus proceedings in any court of competent jurisdiction in El Paso County, Texas.

**6. City Default.** The City shall be in breach under this Agreement if it fails to observe or perform any covenant, agreement, term, or condition required to be observed or performed by the City under this Agreement (each a “City Default”).

**7. City Cure Periods.** For the purpose of the District's exercise of remedies, the City shall have a period of thirty (30) days after the District delivers to the City written notice of the City Default; provided that if the City Default is of such a nature that the cure cannot with diligence be completed within such time period and the City has commenced

meaningful steps to cure promptly after receiving the default notice, the City shall have such additional period of time, up to a maximum cure period of forty-five (45) days, as is reasonably necessary to diligently effect cure.

8. **District Remedies for City Defaults.** The City agrees that in the event of default by the City under this Agreement, the District may, by all legal and equitable means, require the City and any appropriate official of the City (acting solely in his or her official capacity) to remedy any default under, and carry out the provisions of, this Agreement, including specifically the use and filing of mandamus proceedings in any court of competent jurisdiction in El Paso County, Texas.
9. **Attorney's Fees and Costs of Court.** The prevailing party in any legal proceeding to enforce this Agreement shall be entitled to recovery of reasonable attorney's fees and costs of court.

## **ARTICLE VIII Miscellaneous Provisions**

### **A. COMPLIANCE WITH LAW**

The Construction and processes used for procurement shall comply with all federal, state, and local laws, regulations, and ordinances.

### **B. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that each Party shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the other. The Parties further agree that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and the District.

### **C. FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war; civil commotion; acts of God; inclement weather; governmental restrictions, regulations, or interferences; fires; strikes; lockouts, national disasters; riots; material or labor restrictions; transportation problems; or any other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or

performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

**D. LAW GOVERNING CONTRACT; VENUE**

1. The Parties expressly agree that, in all things relating to this Agreement, each party is performing governmental functions, as defined by the Tort Claims Act.
2. Each Party will be responsible for its own actions in providing services or undertaking activities pursuant to this Agreement and shall not be liable for any civil liability that may arise from the furnishing of services, or the activities undertaken by the other Party.
3. If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in El Paso County, Texas.
4. This Agreement shall be construed in accordance with the laws of the State of Texas.

**E. NOTICES**

All notices required or permitted under this Agreement may be given to a party personally, by facsimile, or by mail, addressed to such party at the address stated below or to such other address as one party may from time to time notify the other in writing. Any notice so given shall be deemed to have been received when deposited in the United States mail so addressed with postage prepaid. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. For purposes of notice, demand, request reply, or payment the address shall be:

City: Town of Horizon City  
Attention: Mayor  
14999 Darrington Road  
Horizon City, Texas 79928

With a copy to: Planning Director  
14999 Darrington Road  
Horizon City, Texas 79928



District: El Paso County Emergency Services District No. 1

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With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each Party shall have the right to designate a different address within the United States of America by giving in conformity with the Section.

**F. PARAGRAPH HEADINGS AND CAPTIONS.**

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**G. AGREEMENT CONSTRUCTION**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for nor against any party, regardless of the actual drafter of this Agreement.

**H. NO THIRD-PARTY BENEFICIARIES**

The provisions and conditions of this Agreement are solely for the benefit of the City and the District and any lawful assign or successor of the District and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**I. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**J. MISCELLANEOUS**

(1) Entire Agreement: This Agreement contains the entire agreement of the parties. This Agreement can be amended or assigned only by written agreement signed by the City and Owner.

(2) This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(4) Effective Date: This Agreement is effective on the last date that both the City and Owner have signed and executed this Agreement.

(5) Other Instruments. The Parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(6) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.

**K. SIGNATORY AUTHORITY**

Each Party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery, or performance of this Agreement. Each signatory on behalf of the District and the City, as applicable, is fully authorized to bind that entity to the terms of this Agreement.

**EL PASO COUNTY EMERGENCY SERVICES DISTRICT NO. 1**

**By:** \_\_\_\_\_

**(Printed Name)**

**(Title)**

**Dated:** \_\_\_\_\_

**TOWN OF HORIZON CITY**

**By:** \_\_\_\_\_

**Andres Renteria, Mayor**

**Dated:** \_\_\_\_\_

**(acknowledgements on next page)**

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, known to me as the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of El Paso County Emergency Services District No. 1 and that he/she executed the same as the act of the said El Paso County Emergency Services District No. 1 for the purposes and consideration therein expressed and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Ruben Mendoza, known to me as the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the Town of Horizon City and that he/she executed the same as the act of the said Town of Horizon City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT “A”**

Description of District Infrastructure

DRAFT