

**INTERLOCAL AGREEMENT  
GEOTECHNICAL SUPPORT FOR THE DARRINGTON PROJECT**

**THIS INTERLOCAL AGREEMENT** (the Agreement) is made and entered into effective as of the last date noted below, by and between the TOWN OF HORIZON CITY, TEXAS (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 provide certain geotechnical support necessary for the Darrington Roadway Project (the geotechnical support shall be referred to herein as the Project), located in the Town of Horizon City, El Paso County, Texas 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 the Texas Department of Transportation (TxDOT) have partnered on the development of the Darrington Roadway Project, which has encountered some issues in a pond that require geotechnical evaluation. The Town has determined that the Authority's provision of such geotechnical support would benefit the residents of the Town and region. The services to be provided by the Authority for the Project are more fully defined in **EXHIBIT A** to this Agreement. The Project responsibilities of each Party and Project budget are more fully enumerated within **EXHIBITS B and 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 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 work, 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 Project is not being developed as originally contemplated, the Parties' designated representatives shall meet to discuss appropriate actions to ensure that any defects in the Project or deviations 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 the 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 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:**

Mayor  
14999 Darrington Road  
Horizon City, Texas 79928  
Cc: Planning Director

**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

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Elvia Schuller, City Clerk

**CAMINO REAL  
REGIONAL MOBILITY AUTHORITY**

\_\_\_\_\_  
Joyce A. Wilson, Chair

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Lina Ortega  
Board Secretary

## EXHIBIT A

### DARRINGTON ROAD GEOTECHNICAL SUPPORT PROJECT DESCRIPTION

The proposed scope of work for the Project consists of those geotechnical and related services necessary to develop recommendations for stabilizing a pond base located within the Darrington Roadway Project limits. Specific activities shall include, but may not be limited to, the following:

Site Investigation and Test Pits: Excavate a series of test pits to determine the depth and extent of the sugar sand layer.

Percolation Testing: Conduct testing, at various depths within the sugar sand, to determine its drainage characteristics and its impact on stability. Test for potential water retention that could exacerbate slope instability.

Soil Sampling and Laboratory Analysis: Identify cohesion strength of the sugar sand, soil type and classification (e.g., clay, silt, sand), shear strength and compaction characteristics, and provide a soil report with results and recommendations.

Geotechnical Recommendations: Provide recommendations for stabilizing the pond base, options may include:

- Excavation of the sugar sand and replacement with a more stable material.
- Soil stabilization methods such as lime or cement treatment to increase strength.
- Slope stabilization techniques and drainage improvement recommendations.
- Suggestions for further site preparation or construction approaches.

These activities shall include those associated services reasonably expected to be utilized in the development of the Project. The resulting recommendations shall be developed in coordination with the Town but the services provided for the development of such recommendations shall be limited by the Project Budget identified in **EXHIBIT C** of this Agreement.

[END OF EXHIBIT]

## **EXHIBIT B**

### **DARRINGTON ROAD GEOTECHNICAL SUPPORT PROJECT RESPONSIBILITIES**

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

[END OF EXHIBIT]

## EXHIBIT C

### DARRINGTON ROAD GEOTECHNICAL SUPPORT PROJECT BUDGET

DESCRIPTION	TOTAL ESTIMATED COST	AUTHORITY PAYS WITH TOWN FUNDS	AUTHORITY PAYS WITH OTHER FUNDS
LAND	\$ 0.00	\$ 0.00	\$ 0.00
UTILITY RELOCATION	\$ 0.00	\$ 0.00	\$ 0.00
GEOTECHNICAL SERVICES	\$ 30,000.00	\$ 30,000.00	\$ 0.00
ENGINEERING	\$ 0.00	\$ 0.00	\$ 0.00
CONSTRUCTION	\$ 0.00	\$ 0.00	\$ 0.00
OTHER	\$ 0.00	\$ 0.00	\$ 0.00
TOTAL	\$ 30,000.00	\$ 30,000.00	\$ 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 that the Authority coordinates all such uses with the Town.
2. The Authority shall submit monthly invoices to the Town for 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 categories identified above are inclusive of all administrative costs; provided, however, that Authority administrative costs shall not exceed 3% of the total Project costs.

[END OF EXHIBIT]