

**CONSTRUCTION AND MAINTENANCE AGREEMENT  
FOR  
FM 88 DRAINAGE OUTFALL IMPROVEMENTS**

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

**THIS AGREEMENT IS MADE BY AND BETWEEN** the State of Texas, acting through the Texas Department of Transportation, hereinafter called the “State”, and the County of Hidalgo, acting by and through its duly authorized officers, hereinafter called the “Local Government”.

**WITNESSETH**

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with the local governments; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 110266 authorizing the State to undertake and complete a highway improvement generally described as the reconstruction and widening of FM 88 from Mile 12 North Rd. to Mile 16 North Rd., to include drainage outfall improvements; and

**WHEREAS**, the State is proposing to construct drainage outfall improvements for FM 88 within and across County right of way; and

**WHEREAS**, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance dated \_\_\_\_\_, which is attached hereto and made a part hereof as Attachment “A”, for construction and maintenance of drainage outfall improvements associated with Outfall “F” as shown in Attachment “C”, hereinafter called the “Project”;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

**AGREEMENT**

**Article 1. Time Period Covered**

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until terminated as hereinafter provided.

**Article 2. Work Responsibilities**

The State and Local Government shall perform and execute all responsibilities as described in Attachment “B”.

**Article 3. Right of Access**

If the Local Government is owner of any part of the project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

**Article 4. Responsibilities of the Parties**

The State and Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**Article 5. Termination**

This agreement may be terminated in the following manner:

- ◆ by mutual written agreement and consent of both parties;
- ◆ by the State upon the failure of the Local Government to fulfill its obligations set forth herein;
- ◆ by the Local Government upon the failure of the State to fulfill its obligations set forth herein;

The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the State and Local Government under this agreement. If the potential termination of this agreement is due to the failure of the Local Government to fulfill its contractual obligations as set forth herein, the State will notify the Local Government that possible breach of contract has occurred. The Local Government will make every effort to remedy the breach as outlined by the State within a period mutually agreed upon by both parties. In the event the Local Government does not remedy the breach, the State may terminate this agreement or suspend performance thereunder, and the parties shall conclude their activities relating to the Project.

If the termination is due to the failure of the State to fulfill its contractual obligations, the Local Government will notify the State that possible breach of contract has occurred. The State will make every effort to remedy the breach as outlined by the Local Government within a period mutually agreed upon by both parties. In the event the State does not remedy the breach, the Local Government may terminate this agreement or suspend performance thereunder, and the parties shall conclude their activities relating to the Project.

**Article 6. Notices**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<u>Hidalgo County</u> Juan D. "J.D." Salinas County Judge P.O. Box 1356 Edinburg, Texas 78540	<u>Texas Department of Transportation</u> Mario Jorge, P.E. District Engineer P.O. Box 1717 Pharr, Texas 78577-1717
-----------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------

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

**Article 7. 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, the Local Government shall furnish the State with satisfactory proof of this compliance.

**Article 8. Sole Agreement**

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

**Article 9. Successors and Assigns**

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

**Article 10. Amendments**

By mutual written consent of the parties, this contract may be amended prior to its expiration.

**Article 11. Insurance**

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the 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 the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**Article 12. Signatory Warranty**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the entity they each represent.

**IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT** have executed duplicate counterparts to effectuate this agreement.

**THE STATE OF TEXAS**

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By \_\_\_\_\_  
Mario Jorge, Jr., P.E.  
Pharr District Engineer

Date \_\_\_\_\_

**THE LOCAL GOVERNMENT**

By \_\_\_\_\_  
Honorable Juan D. "J.D." Salinas  
Hidalgo County Judge

Date \_\_\_\_\_

**ATTACHMENT "A"**  
**Resolutions or Ordinances**

## **ATTACHMENT “B” Work Responsibilities**

- 1.) The Local Government hereby authorizes the State to construct FM 88 drainage outfall improvements associated with Outfall “F”, within and across the Local Government’s right-of-way, as shown in Attachment “C”.
- 2.) The State will, at no cost to the Local Government, provide the following drainage outfall improvements:
  - (a) Clean and re-grade approximately 5,195 feet of existing ditch (4 separate sections) within existing Local Government right-of-way.
  - (b) Install approximately 2,266 feet of 36” diameter reinforced concrete pipe within a proposed 60 feet Local Government drainage R.O.W. to connect the two existing ditch sections.
  - (c) Replace the existing 18” diameter RCP ditch cross culvert at Mile 12 ½ N. Rd. with a 48” diameter reinforced concrete pipe.
  - (d) Replace the existing ditch cross culvert at Mile 4 West with a 36” diameter reinforced concrete pipe.
  - (e) Clean the existing ditch cross culvert approximately 1900 feet east of Mile 4 West.

This work shall include cutting and restoring pavement where excavation across existing roadways is necessary, as well as providing for adjustments of existing structures to accommodate the proposed improvements.

- 3.) The Local Government will, at no cost to the State, provide and maintain ownership of all necessary right-of-way for the drainage outfall improvements.
- 4.) Upon completion of the State’s improvements, the Local Government will, at no cost to the State, maintain the drainage outfall improvements to the lines, grades and hydraulic capacity provided with the improvements.
- 5.) The Local Government shall not allow the tapping in of other drainage into this drainage Outfall “F” without prior written approval from the State. To be considered, the Local Government shall provide at no cost to the State, a detailed hydraulic analysis of the overall system which clearly shows the proposed additional drainage would not have any adverse affect on the State’s drainage for FM 88 ( Reference Project C 698-3-80; CSJ: 0698-03-080).
- 6.) Either party hereto may make necessary emergency repairs, notifying the other party hereto of any action taken as soon thereafter as is practical.