

STATE OF TEXAS §  
COUNTY OF HIDALGO §  
CITY OF McALLEN §

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF McALLEN, TEXAS  
AND THE COUNTY OF HIDALGO, TEXAS  
(CHARLES E. CURTIS PARK)**

This Sub-Lease Agreement ("Agreement") is made and entered into this \_\_\_\_ day of April, 2008, by and between the CITY OF McALLEN, TEXAS, (hereinafter referred to as "CITY") and the COUNTY OF HIDALGO, TEXAS (hereinafter referred to as "COUNTY").

**WHEREAS**, the COUNTY leases from the Hidalgo County Housing Authority certain real property commonly known as Charles E. Curtis Park, located at the northwest corner of the intersection of McColl Road and Hackberry Avenue in the City of McAllen ("the Park"); and

**WHEREAS**, the COUNTY has determined that the Park is not presently being utilized to its full potential, as the COUNTY generally operates rural parks and the Park is in an urbanized area of the CITY; and

**WHEREAS**, the CITY desires to install and maintain certain improvements and amenities, including playground equipment, picnic tables, landscaping, and linkage to the Second Street Hike & Bike Trail ("the Facilities") in those areas of the Park as shown in Exhibit "A" hereto for use by the citizens of the CITY and COUNTY, and both parties have determined that it would be in their best interests and the interests of their citizens for such amenities and improvements to be placed in the Park; and

**WHEREAS**, the COUNTY does not desire to lease the facilities known as Palmer Pavilion and the Gilmore Kitchen as described in Exhibit "A" to the CITY;

**WHEREAS**, the CITY has available funds during this current fiscal year and, subject to the budgetary process, in subsequent years which may be used to provide and maintain the contemplated Park improvements and amenities for the benefit of all constituents and both parties; and

**WHEREAS**, the COUNTY represents that there is no impediment to, and it is authorized to enter into this Sub-Lease Agreement; and

**WHEREAS**, the CITY and COUNTY enter into this Agreement pursuant to the provisions of the Intergovernmental Cooperation Act, Texas Government Code, Section 791.001 et seq.,

**NOW, THEREFORE**, in consideration of the foregoing and the following, the CITY and COUNTY hereby agree as follows:

## **ARTICLE I**

### **DEVELOPMENT OF PARK**

1-1. The COUNTY hereby designates the Park as being a CITY-maintained park under the term and conditions of this Agreement. The specific Park grounds covered by this Agreement are identified in Exhibit "A" and do not include the facilities commonly known as Palmer Pavilion and the Gilmore Kitchen.

1-2. The CITY shall prepare plans and specifications for the Facilities being built or installed in Park for review and approval by the COUNTY, which such approval will not be unreasonably withheld.

1-3. The COUNTY shall review the plans and specifications for approval or comments within sixty (60) days from the date of receipt, thereof. The CITY shall incorporate all reasonable changes requested by the COUNTY relating to the Facilities.

1-4. Prior to the installation of any improvements or amenities in the Facilities, the CITY should certify to the COUNTY that the CITY has inspected the Facilities and is familiar with its present condition and agrees to accept the Facilities in such condition.

1-5. The CITY agrees to complete the installation of the Facilities in the Park within one year of the COUNTY's final approval of the Facilities plans and specifications.

1-6. The CITY shall be responsible for any irrigation lines providing irrigation water to the Park including but not limited to installation, relocation, repairs and maintenance of such irrigation lines as well as the expenses associated with obtaining irrigation water from the appropriate irrigation district to the Park.

## ARTICLE II

### EFFECTIVE DATE AND TERMINATION

- 2-1. The effective date of this Agreement is the date of final execution hereof.
- 2-2. This Agreement shall terminate upon the earlier of:
- (i) the mutual agreement of the COUNTY and the CITY, or
  - (ii) the termination and non-renewal of the lease agreement between the COUNTY and the Hidalgo County Housing Authority, or
  - (iii) upon a material breach hereof as may be provided herein, or
  - (iv) upon an event of non-funding of an obligation by either party as hereinafter provided, or
  - (v) no later than August 31, 2029.

## ARTICLE III

### MAINTENANCE

3-1. The CITY, at the CITY's expense, shall provide adequate maintenance of the Park and its grounds, which shall include lawn mowing, irrigation and gardening of the landscape areas and the maintenance and replacement, if necessary, of any Facilities. The maintenance requirements shall include garbage and trash pick up from receptacles to be provided by the CITY for the Park.

## ARTICLE IV

### USE OF FACILITIES

4-1. The CITY agrees that the Facilities shall be available for use by residents of the CITY and COUNTY. The CITY shall have authority to enforce the CITY's security policies in the Facilities at any time. The CITY may enforce a curfew in the Facilities in conformity with the general curfews established by the CITY for its other park facilities.

4-2. The CITY shall, during the term of the Agreement, exercise exclusive control over the Facilities. The CITY may offer recreational programs and other types of programs for use by the general public for the Facilities' intended purposes.

4-3. The CITY shall not make or permit any use of the Facilities that violates any applicable statutes, ordinances, regulations or any other requirements of any government authority having jurisdiction or which constitutes a nuisance, either public or private.

4-4. The CITY shall pay for water, light and power and other utilities and service including garbage collection that apply to the Facilities.

4-5. The CITY may, at its expense, install and or display signs about the Facilities, including signs that recognize that the Facilities are a joint CITY / COUNTY park. Such signs may designate the facilities as being maintained by the City of McAllen Parks and Recreation Department and include other information relating to the COUNTY at the COUNTY's request. The CITY agrees, at the COUNTY's request, to remove any signs installed by CITY upon the termination of this Agreement.

4-6. The CITY shall, with written approval of the COUNTY, be permitted to make, at the CITY's expense, alterations, changes and additions in and to the Facilities, consistent with this Agreement and with the Parks and Recreation programs offered by CITY. Any improvements, alterations, changes and additions made to the Park shall become the property of the COUNTY at no cost to the COUNTY and shall not be removed following termination of this Agreement unless the COUNTY requests in writing that such improvements, amenities and additions be removed at time of termination. CITY shall have ninety (90) days to complete such removal and failing to do so, the COUNTY may cause the removal, and CITY shall pay COUNTY for such invoiced expense within thirty (30) days after receipt. All alterations, additions and changes made by the CITY shall be made in compliance with all applicable laws, ordinances and regulations and shall be completed in a good and workman-like manner and paid for in full within a reasonable time so that no lien shall attach to the Park property.

## **ARTICLE V**

### **INDEMNIFICATION**

5-1. To the extent permitted by law, the CITY shall indemnify and hold harmless the COUNTY and its officers, agents and employees and the Commissioner's Court, individually and collectively, from and against all claims and demands of third persons, including, without limitation, employees and agents of the COUNTY, arising from the CITY's or its invitees or licensees use of the Facilities or from the conduct of the CITY's programs or from any activity or things done, committed or suffered by the CITY in or about the Park and the CITY shall indemnify and hold harmless the COUNTY and the officers, agents and employees of the COUNTY and the Commissioner's Court,

individually and collectively, against all claims arising from any breach or default in a performance of any obligation on the CITY's part to be performed under the terms of this Agreement, arising from any negligence or omission or on wanton misconduct of the CITY or any of the CITY's agents, contractors, employees, invitees or guests. In any such indemnity the CITY may assert the COUNTY's existing immunity from suit or limitation, on liability as against any of such third party claims against the COUNTY.

5-2. To the extent allowed by law, the COUNTY shall indemnify and hold harmless the CITY and its officers, agents and employees and the CITY Commission members individually and collectively from any and all claims and demands by third parties, including, without limitations, employees and agents of the COUNTY arising from the COUNTY's use of the Facilities, Park or the adjacent Palmer Pavillon during the period of this Agreement. In any such indemnity the COUNTY may assert the CITY's existing immunity from suit or limitation, on liability as against any of such third party claims against the CITY.

5-3. The CITY shall during the term hereof and to the extent such insurance is otherwise available, name the COUNTY as an additional insured under the general liability policy of the CITY covering the contractual indemnification of the CITY as provided herein. Such insurance policy may be provided by a third-party commercial carrier or by governmental pooled policy such as Texas Municipal League or through self-insurance, provided that the CITY provides the COUNTY with assurances of ability to meet any financial commitment under such self-insurance program. If applicable, the CITY shall deliver the COUNTY a certificate of insurance showing the COUNTY as co-insured upon the effective date and on an annual basis thereafter. The coverage for the CITY shall be in the amount of at least, the current individual tort claims liability limit of the COUNTY on a per occurrence basis, and have at least an aggregate coverage of ONE MILLION DOLLARS (\$1,000,000.00) per annum.

## **ARTICLE VI**

### **GENERAL CONDITIONS**

6-1. The CITY and the COUNTY hereby agree that each party paying for the performance of the governmental function of services as a part of this Agreement must make those payments from current revenues available to the paying party. Should the

CITY or COUNTY, after making reasonable efforts to fund any obligation hereunder, fail to appropriate funding required to meet such obligation then the other party at its sole remedy may waive the performance of the non-funding entity or terminate this agreement upon giving notice of such remedy as otherwise provided herein.

6-2. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County , Texas.

6-3. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceable shall not affect any other provisions thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained, herein.

6-4. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Should any party be in breach hereof then the non breaching party shall give sixty (60) days notice of such breach and the breaching party shall have such sixty (60) days to cure the breach before the non-breaching party may terminate this Agreement or take any other action to enforce the provisions hereof.

6-5. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained, herein.

6-6. In the event the COUNTY or the CITY breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by such other party.

6-7. Neither the COUNTY nor the CITY shall be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of the COUNTY or the CITY, and which by the

exercise of due diligence the COUNTY or the CITY is unable, wholly or in part, to prevent or overcome.

6-8. This Agreement contains the entire agreement of the parties and shall be binding upon and inure to the benefit of the parties hereto and their respective administrators and representatives. This Agreement is not for the benefit of any other person, and no other person shall have any right against CITY or COUNTY hereunder.

6-9. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.

6-10. All notices provided to be given under this Agreement, shall be given by certified mail or registered mail, addressed to the proper party, at the following address:

**COUNTY:**

County of Hidalgo  
Attn.: County Judge  
100 E. Cano  
Edinburg, Texas 78539

**CITY:**

City of McAllen, Texas  
Attn.: City Manager  
P. O. Box 220  
McAllen, Texas 78505-0220

**IN WITNESS WHEREOF**, the CITY and the COUNTY have caused this Agreement to be executed by their authorized officers effective as of the \_\_\_\_\_ day of April, 2008.

HIDALGO COUNTY, TEXAS

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF MCALLEN

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

Mike R. Perez, City Manager


Approved as to form:

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Kevin G. Pagan, City Attorney

Approved as to form:

ATLAS & HALL, L.L.P.

By:  \_\_\_\_\_  
Stephen L. Crain, County Attorney