

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 28th 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.

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 28th day of April, 2008.

HIDALGO COUNTY, TEXAS

By: _____

Printed Name: _____

Title: _____

CITY OF MCALLEN

By: Mike R. Perez

Mike R. Perez, City Manager


Approved as to form:



Kevin ~~G~~ Pagan, City Attorney
D.

Approved as to form:

ATLAS & HALL, L.L.P.

By: 

Stephen L. Crain, County Attorney