

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN CITY OF DONNA, TEXAS AND
THE COUNTY OF HIDALGO, TEXAS**

This Agreement is made and entered into on this the _____ day of _____, 2009, by and between Hidalgo County, a political subdivision of the State of Texas and the City of Donna, Texas, hereinafter referred to as "City" pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, County was awarded a grant hereinafter referred to as "Operation Stonegarden Grant" or the "Grant", in the amount of Two Million Four Hundred and Eighty Thousand Dollars and no/100ths (\$2,480,000.00) from the U.S. Department of Homeland Security ("DHS") through the State of Texas Governor's Division of Emergency Management ("GDEM"), of which certain funds is intended to be subcontracted to various local police departments including City's police department;

WHEREAS, the purpose of the Grant is to assist counties along the United States borders to enhance law enforcement preparedness and operational readiness among regional law enforcement agencies in a joint mission to secure the borders;

WHEREAS, the Grant allows local law enforcement agencies to use funds for certain law enforcement operating expenses while participating in border security operations approved by DHS;

WHEREAS, the Grant requires County, as the grant recipient, to comply with certain terms and conditions more particularly described in **Exhibit "A"** attached hereto and titled, "Governor's Division of Emergency Management 2008 Sub-Recipient Agreement to Hidalgo County," dated November 17, 2008, and further requires any sub-recipient accepting funding from the Grant through a subcontract or agreement to also comply with certain provisions of the terms and conditions stated in **Exhibit "A"**;

WHEREAS, City desires to carry out DHS eligible activities as described in the **Statement of Work** attached hereto as **Exhibit "B"**;

WHEREAS, the County proposes to contract with City in order that the eligible activities described in **Exhibit "B"** can be carried out for the benefit of the residents of County and City.

NOW, THEREFORE, County and City in consideration of the mutual covenants expressed hereinafter, agree as follows:

**SECTION I
RULE AND REGULATIONS**

The City agrees to cooperate with the County in respect to the implementation of the Grant within its jurisdiction and as supported under Public Law 110-161, Department of Homeland Security Appropriation Act of 2008.

**SECTION II
DEBARMENT/SUSPENSION CERTIFICATION**

City certifies that City and its contractors/vendors associated with this Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System found at <http://www.epls.gov>.

**SECTION III
TERMS AND CONDITIONS AND STATEMENT OF WORK**

City represents that it has read and understood the Sub-Recipient Agreement between the County and the Governor's Division of Emergency Management attached hereto as Exhibit "A" and as a condition of participating in the Grant, City agrees to comply with all terms and conditions required of entities accepting funds through an agreement and the City further agrees to perform services as outlined in the Statement of Work (Exhibit "B") for and in consideration of reimbursement from County in an amount not to exceed One Hundred and Seventy Six Thousand Eight Hundred and Ninety Four Dollars and 80/100ths (\$176,894.80) as delineated in the City Grant Budget (Exhibit "C") and Cost Reimbursement Request Form (Exhibit "D").

City agrees to notify County in writing and obtain from County written approval, prior to any proposed changes, delays or departures from the Statement of Work (Exhibit "B") and Grant Budget (Exhibit "C") related to the Grant prior to commencing any work on any changes made therein.

County shall not be liable for costs incurred or performances rendered by City before commencement of this Agreement or after termination of this Agreement and shall be responsible for reimbursement as described in the Statement of Work (see Exhibit "B") and the City Grant Budget (see Exhibit "C").

**SECTION IV
RECORDS AND REPORTS**

City agrees to establish and maintain all necessary records and reports that may be necessary for reimbursement from County of Grant funds, including but not limited to the Cost Reimbursement Form (see Exhibit "D") and Activity Log (see Exhibit "E").

City understand that it is solely the City's responsibility to keep all records and reports pertaining to Grant activity within their municipality in a manner acceptable to County. Failure to maintain records and reports may result in forfeiture of the City's designated Grant funds.

SECTION IV MONITORING VISITS

City agrees to allow County to conduct on-site monitoring visits to assure compliance with applicable federal requirements, terms and conditions, and adequacy of timeliness of performance by City and those performance goals are being achieved, if applicable. City shall give Homeland Security, GDEM, the Comptroller General of the United States, County, County auditor, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by City pertaining to this Agreement.

SECTION V PAYMENT REQUESTS

City agrees to submit to the County Auditor's Office, a properly completed SSA/Division of Emergency Management Cost Reimbursement Request (See Exhibit "D") and all supporting documentation, including but not limited to General Ledger Reports, Payroll Distribution Reports, Time Sheets, Activity Logs (See Exhibit "E"), Copies of Invoices, and other related information whether or not requested by County on a monthly basis no later than the 15th of each month for the previous month. Each Cost Reimbursement Request shall be completed in the instructions included in Exhibit "D".

City and County agree that all unused Grant funds at the end or termination of this Agreement will be reallocated or reprogrammed by County.

SECTION VI AUDIT REQUIREMENTS

City agrees to comply with the applicable requirements and standards as set forth in OMB Circular A-133, Audits of States, Local Governments and Non-Profit organizations.

City agrees to furnish County a Financial Management letter covering the period of this Agreement that includes detailed receipts and disbursement of payments to City hereunder. However, if City expends Five Hundred Thousand Dollars (\$500,000) or more in federal funds, City must, within nine (9) months from the end of the fiscal year, supply County with an audit of revenues and expenditures conducted by a certified public accountant. If the City expends less than \$500,000.00 a year in federal awards, then they are exempt from the OMB Circular A-133 audit requirements for that year; however, records must be available for review or audit by appropriate officials of the

federal agency, the General Accounting Office and County. If a City is exempt, a 990 Tax Return (Return of Organization Exempt from Income Tax), and Financial Statements are required for the most recent fiscal year ended. If applicable, City agrees to cooperate with the County relating to any inquiries regarding audits and City acknowledges that a Financial Audit shall be provided to County at the expense of the City. Audit information shall be available to County staff, and any and all applicable federal agencies.

SECTION VII SUSPENSION AND TERMINATION

City understands that this Agreement may be suspended or terminated if City materially fails to comply with the provisions of this Agreement or the provisions so listed in Exhibits "A "through "E".

If City fails to fulfill in a timely and proper manner its obligations under this Agreement, or City violates any of the Agreements or stipulations of this Agreement, then the County shall provide City written notification of such non-performance. Such non-performance may be the basis for immediate termination of this Agreement. **Should any breach of this Agreement relate to a violation of federal law or regulation that results in GDEM or Homeland Security demanding reimbursement from the County or the City or its successor, the County will terminate Agreement and seek reimbursement of all funds from City.** City shall not be relieved of the liability to the County for damages sustained by the County by virtue of any breach of this Agreement by City and County may withhold any payments to City for violations of state, local or federal regulations. Should the County become aware of any activity by City, which would jeopardize the County's position with Homeland Security, GDEM or any other state or federal agency, or which would cause a payback of federal funds, then the County may take appropriate action including injunctive relief against City to prevent the transaction as aforesaid. The failure of the County to exercise any right shall in no way constitute a waiver by the County to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

It is expressly agreed that this Agreement may not be amended except in writing upon the joint action of the governing bodies of both the County and City.

SECTION VIII ASSETS

City shall not purchase any asset unless so permitted by the County and such procurement shall be done in the form and manner so required by the County.

The disposition of any asset improved or acquired in part or in whole with Grant funds by the City must be done with prior written approval of the County and the County shall be reimbursed for the asset, if sold, in the full amount of the disposed value of the asset. Upon such reimbursement, the City shall become the owner of all assets

purchased or acquired through this Agreement and shall be responsible for the care, maintenance and repair of same.

SECTION IX LIABILITY FOR DISALLOWED COSTS

The City understands and agrees that it shall be liable to County for any costs disallowed pursuant to financial and compliance audit(s) of City agreement funds. The City further understands and agrees that reimbursement to County of such disallowed costs shall be paid by the City from funds that were not provided or otherwise made available to City pursuant to this Agreement or any other federal contract.

SECTION X INDEMNITY CLAUSE AND INSURANCE REQUIREMENT

City agrees to hold harmless the County its elected officials, officers, employees, consultants, or agents and to indemnify County's elected officials, officers, employees, consultants or agents and to defend County against any and all claims brought against County by elected officials, officers, employees, or agents of City or brought by any third person arising in any manner directly or indirectly from City programs, activities or events conducted pursuant to this Agreement.

City shall acquire, maintain and furnish to County a Certificate of Insurance as proof that it has secured and paid for policies of public liability and automobile insurance to cover all operations and services under this Agreement with limits of not less than \$300,000.00 per occurrence, \$300,000.00 aggregate, covering all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement. This requirement shall be to meet City's duty of indemnification under this paragraph.

SECTION XI PROCUREMENT

City agrees to conform to its own applicable purchasing laws, regulations, employment policies and procedures with respect to any purchases or employment in relation to the Grant and/or this Agreement.

SECTION XII CONFLICT OF INTEREST

City covenants that neither its elected officials, officers, employees, consultants, nor agents who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities funded by the Grant. City

agrees that all elected officials, officers, employees, consultants or agents shall comply fully with the requirements of Texas Local Government Code Chapter 171.

City agrees that no person who is an elected official, officer, employee, consultant, or agent of the City's organization or the County's organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in Exhibit "A" during the Grant period or for a period of one (1) year thereafter.

City is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

SECTION XIII MISCELLANEOUS PROVISIONS

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

No Waiver. No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and City, and not otherwise.

Texas Law to Apply. 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. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth

below, or (iv) sent by facsimile or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
P.O. Box 758
Edinburg TX 78540-0758

If to City: City of Donna
307 South 12th
Donna, Texas 78537

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

Additional Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Assignment. This Agreement shall not be assignable by City. County may assign this Agreement without the consent of City.

Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by County and City have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County and City in accordance with its terms.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

THE CITY OF DONNA, TEXAS

Mayor

ATTEST:

City Secretary

COUNTY OF HIDALGO

J. D. Salinas, III, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVE AS TO FORM:

ATLAS & HALL, L.L.P.

By: Stephen Crain