

Diana R. Serna

From: Richard Hinojosa [rhinojosa@ci.edinburg.tx.us]
Sent: Thursday, May 14, 2009 3:55 PM
To: drserna@bizrgv.rr.com
Subject: Draft Interlocal Agreement - ORCA

Diana:

As discussed, I spoke with J.J. Rodriguez my City Manager about the Agreement and he wanted this agreement reviewed by Ric Gonzalez the City Attorney for possible placement on the May 19, 2009 City Council Agenda. Mr. Gonzalez reviewed and forwarded a revised draft to Mr. Steve Crain the County Attorney and they collectively made additional revisions. Attached please find the draft agreement for your review.

I told Mr. Rodriguez that the State will ultimately decide on how the funds will be distributed either with the City turning over the full \$250,000 and letting the County proceed or the City having it as a project and contracting with County Pct. 4 to do the work. In either event, on my recommendation form for approval I am going to get the Council to approve the Agreement pending to form upon approval of the State.

Should you have any questions or revisions, please do not hesitate to contact me.

Thanks.

Richard

6/24/2009

THE STATE OF TEXAS §
COUNTY OF HIDALGO §

INTERLOCAL AGREEMENT

This AGREEMENT is made between HIDALGO COUNTY, TEXAS, hereinafter referred to as the COUNTY, acting through its Commissioners Court, and the CITY OF EDINBURG, hereinafter referred to as the CITY, acting through its City Council.

Pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791, and V.A.T.S. Article 6702-1, Section 2.010, the COUNTY agrees to expend grant funds allocated through the COUNTY'S Method of Distribution for Disaster Recovery to accomplish eligible disaster recovery activities on behalf of the CITY as described in any Community Development Block Grant Disaster Recovery Fund Contract awarded to the COUNTY by the Office of Rural Community Affairs (ORCA), hereinafter referred to as the GRANT.

WITNESSETH:

WHEREAS, the City of Edinburg has received an ORCA allocation in the amount of \$2,224,325 ORCA allocation and Edinburg's contribution of \$250,000 toward the drainage improvements project in the Precinct 4 area to benefit county and city, such project is referred to as the San Carlos Drainage Improvements Project, hereinafter referred to as "the Project."; and

WHEREAS, Edinburg is required and it desires to approve the city's use of the \$2,224,325 ORCA allocation and city's contribution of \$250,000 toward the drainage improvements project in the Precinct 4 area to benefit county and city?

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

Term. The term of this Agreement shall begin May 27, 2009. Agreement shall terminate upon COUNTY'S receipt of the GRANT close-out letter from ORCA.

Obligations of County. The COUNTY shall:

1. Execute its responsibilities in accordance with its Method of Distribution;
2. Serve as applicant and contractor with ORCA for all GRANT activities;
3. Endeavor to execute its GRANT responsibilities in a timely and efficient manner;
4. Be responsible to maintain compliance with GRANT contract terms and conditions in the completion of all GRANT activities, including those undertaken by or for the CITY;
5. Gain CITY approval before awarding a construction contract that exceeds the funds available in the GRANT budget. (see Item 5 below for CITY responsibilities in funding amounts exceeding the GRANT budget); and
6. Require that CITY review and approve change orders prior to COUNTY approval.

Obligations of City. The CITY shall:

1. Comply with all COUNTY requests for information required to fulfill the COUNTY'S obligations under the GRANT;
2. Gain COUNTY approval during engineering design and prior to bid for any changes to the GRANT project scope;
3. Provide unfettered access by the COUNTY and its representatives to the construction site throughout the term of this AGREEMENT;
4. Be solely responsible for the continued maintenance and operation of any proposed improvements upon acceptance by the COUNTY of the Certificate of Construction Completion.;
5. Pay for any cost overruns attributable to construction contract award, change orders, project redesign, or additions to the GRANT scope of work; and
6. Pay for any GRANT project-related costs which are not reimbursable from the GRANT or are required to be repaid to ORCA.

Indemnification. The parties further agree that any GRANT funds provided by the COUNTY are without warranty of any kind to the CITY or any third party, and the

CITY hereby agrees, to the extent allowable by law, to defend, hold harmless, and indemnify the COUNTY, its officers, agents, and employees for any claims for injury or death of any person or any property damage arising out of the COUNTY'S performance of its obligations under this Agreement. Nothing herein shall be construed to create any rights in third parties.

Conflict of 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 their 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 provision 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 any party hereto of any breach of any provision of the 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) and representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Edinburg and District, 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 obligation 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 communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Edinburg: City of Edinburg
 Attention: J.J. Rodriguez, City Manager
 P.O. Box 1079 – 415 West University
 Edinburg, Texas 78540 -1079

If to County: Hidalgo County, Texas
 Attention: J.D. Salinas, County Judge
 P.O. Box 758
 Edinburg, Texas 78540-0758

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 administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Assignment. This Agreement shall not be assignable

Headings. The headings and captions contained in this Agreement are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of 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 singular shall include the plural whenever and so often as may be appropriate.

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

Governmental Purpose. Each party hereto is entering into this agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

Commitment of Current Revenues Only. In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a

continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

14.

This Interlocal Agreement is contingent upon ORCA's approval of the Project.

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

SIGNED and **ENTERED** this _____ day of _____, 2009.

HIDALGO COUNTY, TEXAS

CITY OF EDINBURG

J.D. SALINAS
COUNTY JUDGE

HON. RICHARD GARCIA
MAYOR

ATTEST:

ATTEST:

ARTURO GUAJARDO, JR.
COUNTY CLERK

MYRA AYALA-GARZA
CITY SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Steve Crain, County Attorney

Ricardo Gonzalez, City Attorney