

ORDER NO. \_\_\_\_\_

AN ORDER OF THE COUNTY OF HIDALGO AUTHORIZING THE SALE OF CERTAIN PERSONAL PROPERTY AND THE FINANCING THEREOF TO THE HIDALGO COUNTY DRAINAGE DISTRICT NUMBER ONE ("DRAINAGE DISTRICT"); APPROVING CERTAIN INSTALLMENT PURCHASE TERMS MADE PAYABLE BY THE DRAINAGE DISTRICT FROM AVAILABLE FUNDS OF THE DRAINAGE DISTRICT; SUBJECT TO ANNUAL APPROPRIATION; PRESCRIBING THE TERMS AND FORM THEREOF; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL THEREOF AND INTEREST THEREON; AND APPROVING OTHER MATTERS INCIDENT THERETO.

## ARTICLE I

### **FINDINGS AND DETERMINATIONS**

1.1. Findings and Determinations. It is hereby officially found and determined as follows:

(a) The County of Hidalgo (the "County") and Hidalgo County Drainage District No. One (the "Drainage District") have entered into a Master Interlocal Agreement, dated December 10, 2002, to accomplish the aerial photography, mapping and engineering of certain drainage projects for the mutual benefit of the County and of the Drainage District (the "Master Agreement").

(b) The Master Agreement was subsequently amended by that FIRST AMENDED MASTER AGREEMENT FOR JOINT PROJECTS AND SHARING COST OF PLANNING, AERIAL PHOTOGRAPHIC MAPPING, ENGINEERING DESIGNS, ENVIRONMENTAL STUDIES; USE OF PLANS, AERIAL PHOTOGRAPHIC MAPS AND ENGINEERING DESIGNS; ACQUISITION OF RIGHTS-OF-WAY TO BE USED FOR STORM AND FLOOD DRAINAGE PROJECTS AND ACQUISITION OF CONSTRUCTION AND MAINTENANCE EQUIPMENT BY POLITICAL SUBDIVISIONS IN HIDALGO COUNTY, dated August 25, 2009 (the "First Amended Interlocal Agreement"), for the purpose of undertaking the joint improvement of the County's storm drainage facilities (the "Project"). It is the intention of the County and the Drainage District that the First Amended Interlocal Agreement accomplishes the purpose of the further design, financing and construction of additional drainage facilities to benefit both the County and the Drainage District;

(c) The Drainage District is authorized by the Public Property Finance Act, Local Government Code, Section 271.001, et seq., Vernon's Texas Civil Statutes, as amended (the "Personal Property Finance Act"), to purchase, acquire or use certain equipment and machinery (the "Equipment") and finance its purchase thereof as necessary for the efficient and economic operation of the Drainage District.

(d) The County and the Drainage District are further authorized under Local Government Code, Section 561.002(a), to enter into joint project agreements in order to accomplish the joint design, construction and management of a drainage system (the “Joint Property Act”).

(e) The County and the Drainage District, may, under the terms of the Interlocal Cooperation Act, enter into cooperative agreements.

(f) Texas Local Government Code Section 263.152 (a)(1) authorizes the County to sell the County’s surplus or salvage property to another County or to a political subdivision, including the Drainage District. The competitive bidding requirements imposed by Texas Local Government Code Section 263.152 will not apply in that instance. Surplus property is defined to exclude “salvage” property under Tex. Gov’t Code, Section 263.151 and the County need not hold surplus property for any time period of possession or use before the property being deemed “surplus”.

(g) The Drainage District desires to acquire from the County certain equipment to be used for the construction and maintenance of a drainage system and enter into one or more installment purchase agreements with the County under the authority of laws of the State of Texas, and in particular, the Personal Property Finance Act and the Joint Project Act, to acquire certain equipment (the “Equipment”) under terms considered appropriate by the County’s and the Drainage District’s respective governing bodies.

(h) The County has arranged to acquire the Equipment for the purpose of jointly with the Drainage District undertaking the construction and maintenance of parts of a storm drainage system (the “Joint Project”) with the Drainage District. The County anticipates selling the Equipment to the Drainage District for a sum equal to the lesser of its purchase price or its fair market value at the time of the transfer and sale of the Equipment. The County may rely on any express authority granted by State law, including, but not limited to (i) the Interlocal Cooperation Act, (ii) the Personal Property Finance Act, (iii) the Joint Project Act, or the County may declare the Equipment surplus property under the provisions of Texas Government Code §263 to accomplish the installment sale and purchase.

(i) Under the Joint Project Act, the agreement between the County and the Drainage District may contain any provisions considered necessary by the parties. Further, under the agreement, one or both may own the Joint Project and maintain the Join Project while one or both contributes to the expenses of maintenance.

(j) The County and the Drainage District have entered into and adopted the First Amended Interlocal Agreement that sets out the terms and conditions pursuant to which the County and the Drainage District will jointly undertake the Joint Project.

(k) The County and the Drainage District intend to adopt Installment Purchase Agreements for the sale and transfer from the County to the Drainage District of the Equipment to be used for the Joint Project.

## ARTICLE II

### DEFINITIONS AND INTERPRETATIONS

2.1. As used herein, the following terms shall have the meanings specified unless the context clearly indicates otherwise:

Acceptance Certificate. A Certificate of the Drainage District, in substantially the form set forth in Attachment “B” hereto, by which the Drainage District accepts delivery of the Equipment sold by the County.

Acceptance Date. Unless otherwise agreed to by the prior written consent of the Drainage District, the date on which the Acceptance Certificate is executed and delivered by the Drainage District to the County.

Additional Payments. Any payments required to be made by the Drainage District representing expenses which may have been advanced by the County, including expenses for repairs, maintenance, shipment, and insurance costs, if any, of the Equipment, pending transfer to the Drainage District.

Authorized Officer. In the case of the County, the County Judge or some authorized officer of the County, and when used in reference to an act or document of the Drainage District, means the Chairman of the Board or some authorized officer of the Drainage District expressly designated to accomplish the purpose of acceptance of the Equipment upon its transfer.

Available Funds. All funds of the Drainage District which are legally available for payment of its maintenance and operation expenses.

Commissioners Court. The Commissioners Court of the County of Hidalgo, Texas.

County. The County of Hidalgo, Texas.

Closing. The date of delivery of all executed documents related to an Acceptance Certificate.

Equipment Acquisition Account. An account on the books and records of the Drainage District, or otherwise designated and established by the Drainage District,, to account for disbursement of Available Funds for purchase of the Equipment.

Equipment. The property to be acquired by the Drainage District from the County which shall be described in the form set out in Attachment “A” hereto which will be attached to a Schedule, together with any and all additions, modifications, attachments, replacements and parts thereof.

Installment Purchase Agreement. The specimen instrument in substantially the form set forth in Attachment “D” hereto, which sets out the documents and procedures for the installment sale and purchase of the Equipment between the County and the Drainage District.

Order. This Order and all amendments hereof and supplements hereto.

Payments. The scheduled payments of principal and interest, if any, and costs credited toward the purchase of the Equipment by the Drainage District under a schedule approved hereunder.

Purchase Price. The purchase price for Equipment.

Schedule. One or more specifically numbered schedules authorized hereunder, between the Drainage District and the County, incorporating the provisions of the Order and containing a description of the Equipment to be purchased, the purchase price, certain attachments, and an amortization schedule, if necessary.

Vendor or Vendors. The original vendor or seller of the Equipment.

### **ARTICLE III**

#### **Acquisition of Equipment; Conditions Precedent.**

3.1. County has ordered or shall order the Equipment pursuant to one or more equipment purchase agreements from one or more vendors in accordance with competitive procurement procedures as required by state law. County shall remain liable to each such vendor with respect to its duties and obligations in accordance with the Purchase Agreements and County shall solely bear the risk of loss with respect to any loss or claim relating to any acquired item of Equipment covered by the Equipment Purchase Agreement. The Drainage District shall have no direct obligation to any vendor and shall never be considered a beneficiary of any contract between the County and a vendor.

3.2. The obligation of the Drainage District to acquire any Equipment or an interest in the Equipment, whether at the time of its procurement by the County under the Joint Project Act, the Interlocal Cooperation Act, or if and when the County should declare the Equipment “surplus” property under the provisions of Tex. Loc. Gov. Code §263.152, and to pay or provide other consideration for the Equipment, is strictly subject to approval of an Installment Purchase Agreement and the receipt by the Drainage District of certain documents and the satisfaction of the certain conditions, as follows, all of which shall be satisfactory in form and substance to the Drainage District:

- (i) County shall have procured the Equipment in accordance with competitive procurement procedures as required by state law and shall have completed a schedule for each vendor containing all of the information and certifications as set out in Attachment “A-1”.

(ii) Drainage District shall have accepted the Equipment (or agreed to accept) by delivery to the County of an Acceptance Certificate in the form of Attachment “B”, whereupon the Equipment shall immediately become the property of the Drainage District;

(iii) An Installment Purchase Agreement along with Attachments “A”, “B”, and “C”, duly executed and delivered by County;

(iv) Evidence of insurance as required under section 5.4 of the Installment Purchase Agreement;

(v) Assignment to the Drainage District of all warranties on the Equipment;

(vi) Such other documents, instruments, certifications, or other items as may be reasonably required by the Drainage District or by its legal counsel.

3.3. Upon satisfactory tender of all documents and conditions set out in section 3.2, the Drainage District shall deliver to the County the principal and interest payment due under the Installment Purchase Agreement, or deliver to the County the purchase price in full for the Equipment.

3.4 All payments by the Drainage District to the County from the Equipment Acquisition Account shall be from the Drainage District’s maintenance and operation tax revenues. It is understood that the payments made by the Drainage District and the sale by the County are expressly undertaken under the authority, among other state authority, particularly Texas Government Code, Sections 263.152, 561.002, 561.002(a), 561.002(b) & 561.002(c).

## ARTICLE IV

### MISCELLANEOUS

4.1. Further Proceedings. The County Judge, on behalf of the County, and the Chairman of the Board and other appropriate officials of the Drainage District are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Order.

4.2. Severability. If any section, paragraph, clause or provision of this Order shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Order.

4.3. Open Meeting. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the County’s Commissioners Court and the Drainage District’s Board of Directors at which this Order was adopted was posted

at a place convenient and readily accessible at all times to the general public at the official meeting place of the County and the Drainage District for the time required by law preceding this meeting, as required by the Texas Open Meetings Law, Chapter 551, Texas Government Code, as amended, and that this meeting was open to the public as required by law at all times during which this Order and the subject matter thereof were discussed, considered and formally acted upon. The Commissioners Court and the Drainage District Board of Directors further ratifies, approves and confirms such written notice and the contents and posting thereof.

4.4. Repealer. All orders and resolutions or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

PASSED AND APPROVED ON \_\_\_\_\_.

HIDALGO COUNTY

\_\_\_\_\_  
County Judge

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)

PASSED AND APPROVED ON \_\_\_\_\_.

HIDALGO COUNTY DRAINAGE  
DISTRICT NO. ONE

\_\_\_\_\_  
County Judge

ATTEST:

\_\_\_\_\_  
County Clerk

(SEAL)

**ATTACHMENT "A"**

**DESCRIPTION AND PURCHASE PRICE OF AND  
INSTALLMENT PAYMENT PLAN FOR EQUIPMENT**

**ATTACHMENT "A-1"**

**SCHEDULE**

(Incorporating all terms and conditions of the Master Installment Purchase Agreement, Series 2010)

**DESCRIPTION OF EQUIPMENT**

<b><u>VENDOR</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>P.O. #</u></b>	<b><u>SERIAL #</u></b>	<b><u>UNITS</u></b>	<b><u>PRICE</u></b>
County of Hidalgo					\$
County of Hidalgo					
	<b>Total</b>				
County of Hidalgo					
County of Hidalgo					
County of Hidalgo					
	<b>Total</b>				
County of Hidalgo					
	<b>Total</b>				
		<b>Total</b>			

**LOCATION OF EQUIPMENT**

ADDRESS: 1102 N. Doolittle Rd.  
 CITY: Edinburg COUNTY: Hidalgo  
 STATE: Texas ZIP: 78539

**CERTIFICATION**

Hidalgo County Drainage District No. 1 hereby certifies that the description of the property set forth above constitutes an accurate account of the Equipment described and procured through a competitive procurement procedure under state law.

Hidalgo County Drainage District No. 1

By: \_\_\_\_\_  
 (Authorized Signature)

\_\_\_\_\_  
 Printed Name and Title

Date: \_\_\_\_\_

**ATTACHMENT "B"**  
**ACCEPTANCE CERTIFICATE**



For Drainage District:

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

**ACCEPTED on this the \_\_\_ day of \_\_\_\_\_, 2010.**

**ATTACHMENT “C”**

**FORM OF AMORTIZATION SCHEDULE**

**AMORTIZATION SCHEDULE FOR INSTALLMENT PURCHASE**

(This schedule sets out the Payments due under a Schedule authorized under the Hidalgo County Drainage District No. One Equipment Purchase Agreement, Series 20\_\_, dated \_\_\_\_\_20\_\_).

CAPITAL COST:    \$  
RATE:  
TERM (YEARS):

Payment #	Date	Payment Amount*	Principal	Interest**	Remaining Amount
<b>Totals</b>					

\* Includes interest

\*\* Variable rate

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

Date: \_\_\_\_\_