

STATE OF TEXAS §

COUNTY OF HIDALGO §

**AMENDMENT AND RESTATEMENT OF THAT CERTAIN INTERLOCAL
COOPERATION AGREEMENT BETWEEN THE COUNTY OF HIDALGO AND
CITY OF DONNA, TEXAS CONCERNING CERTAIN IMPROVEMENTS TO FARM
TO MARKET ROAD 493 FROM CHAMPION STREET SOUTH OF U.S. HIGHWAY
281**

THIS agreement is made on this the _____ day of _____, 20__ by and between the CITY OF DONNA, TEXAS, hereinafter referred to as the City and the COUNTY OF HIDALGO, Texas hereinafter referred to as "COUNTY", pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, the City is a home rule municipality located in Hidalgo County, Texas; WHEREAS, the County is a county in the State of Texas;

WHEREAS, on or about June 8, 2009, the City of Donna ("City") and Hidalgo County (the "County") entered into an Interlocal Cooperation Agreement (the "Agreement") regarding certain road improvements to Farm to Market Road 493 from Champion Street, south to U.S. Highway 281 (the "Road"), a section which is in part within the city limits of City and in part within County jurisdiction;

WHEREAS, the Texas Department of Transportation (TxDOT) has deemed it necessary to make certain highway improvements to the Road;

WHEREAS, the City has been designated by TxDOT as eligible entity to receive reimbursement for work related to the Project within the city limits;

WHEREAS, the County has been designated by TxDOT an eligible entity to receive reimbursements for work related to the Road with the county limits;

WHEREAS, the County and the City desire to cooperate in the improvements required to complete the Road which will include the acquisition of certain Right-of-Way (ROW);

WHEREAS, by virtue of TxDOT Minute Order 111487 issued on August 28, 2008, TxDOT granted the City a reduction in the required local match for eligible expenses under the Economically Disadvantaged County Program (EDCP);

WHEREAS, by virtue of TxDOT Minute Order 112018 Issued on October 29, 2009, TxDOT granted the County a reduction in the required local match for eligible expenses under the Economically Disadvantaged County Program (EDCP);

WHEREAS, the County and City are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code 791.001 et. Seq. which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act;

WHEREAS, with the addition of the Donna/Rio Bravo International Bridge and the increase in traffic volumes anticipated, it is imperative that the Road be improved; therefore, the City in coordination with TxDOT have agreed to utilize the \$5,000,000.00 in federal funds that were originally designated to construct an overpass at US 281/FM 493 intersection;

WHEREAS, Donna agrees to support the proposition that the County incurs all preliminary engineering costs associated with the development of the Road within the city limits.

NOW, THEREFORE, County and Donna, in consideration of the mutual covenants expressed hereinafter, agree to amend and restate the Original Agreement in its entirety and the Original Agreement is superseded by the terms of the restated agreement as follows:

1. The County agrees to undertake the acquisition of right-of-way for the Road within the city limits of the City, including but not limited to, compensable utilities and utility relocation required, title reports, title policies, appraisals, recording fees, closing costs, and cost of land and condemnation.
2. The Road at various points, passes through the jurisdiction of City and County and forms a connecting link or integral part of the County road system.
3. County agrees to invoice the City for all expenses incurred on the City's behalf for the Road for work performed within the city limits. City agrees to make such payment to County within thirty (30) days of receipt of invoices. County will not request reimbursement from the City for costs incurred by County pursuant to County's engineering Contract No. C-08-417-12-09.
4. TxDOT will coordinate work schedules in order to provide for minimal disruption of traffic and operation during the construction of the Road as described herein.
5. Each party agrees to conform to its own applicable purchasing laws, regulations, policies, and procedures with respect to the portion of the work under this Agreement performed by each party.
6. 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 provisions of the Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

7. 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.
8. 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 agreement 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 the City and County, and not otherwise.
9. 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.
10. Notice: Except as maybe 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 City: City of Donna
Attention: David S. Simmons, Mayor 307 S. 12th Street
Donna, Texas 78537

If to County: Hidalgo County, Texas
Attention: Ramon Garcia, Hidalgo County Judge
P. O. Box 758
Edinburg, Texas 78540-0758

With copy to: Joel Quintanilla, Commissioner, Precinct No. 1
1902 Joe Stephens Ave.
Weslaco, Texas 78596

11. 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.
12. 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.
13. 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.
14. Assignment: This Agreement shall not be assignable.
15. Headings. The headings and captions contained in this Agreement are solely for the convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.
16. 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 as often as may be appropriate.
17. Authority to Execute. The execution and performance of this Agreement by the City and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the City and County in accordance with its terms.
18. Governmental Purpose. Each party hereto is entering into the 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.
19. Commitment or 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

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

CITY OF DONNA

By: 
Hon. David S. Simmons, Mayor

ATTEST:


City Secretary

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

ATTEST:

County Clerk

APPROVED AS TO FORM:

ATLAS & HALL, LLP

By: _____
Stephen L. Crain

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**APPROVAL OF
INTERLOCAL COOPERATION AGREEMENT
PROJECT**

In accordance with Texas Government Code §791.014, Hidalgo County, Texas, acting by and through the Hidalgo County Commissioners Court, has been advised of a proposed project regarding certain road improvements to Farm to Market Road 493 from Champion Street, South to U.S. Highway 281 (the "Road"), a section which is in part within the city limits of City and in part within County jurisdiction through an Interlocal Cooperation Agreement to be entered into with the City of Donna, Texas, and Hidalgo County.

By vote on _____ 2010, the Hidalgo County Commissioners Court has approved the Project identified above.

By: Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, County Clerk

APPROVED AS TO FORM:

Atlas & Hall, L.L.P.

By: _____
Stephen L. Crain